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## Liquor Law

### Should States be Allowed to Discriminate Against Nonresident Liquor Business Owners?

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*Special to the Legal*

**P**ennsylvanians looking to sit down and enjoy a beer, cocktail or glass of wine in 2019 have many more options than they did in the past. After decades of Pennsylvania's restrictive liquor laws limiting innovation, in 2016, broad changes to the Liquor Code were enacted under legislation known as Act 39 and Act 85 of 2016. These changes, together with some crafty lawyering and business planning, have opened up new alternatives to the way alcoholic drinks are consumed in this commonwealth. In addition to the traditional drinks market found in restaurants and bars, Pennsylvanians can now grab a drink at the grocery store, in a beer garden, at a farmer's market, at a distillery tasting room or a seasonal pop-up, to name a few, and this is just the beginning.

**BREWERIES, DISTILLERIES  
AND WINERIES CAN  
STOCK FULL BARS.**



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Before Act 39, the drinks breweries could sell in their tasting rooms were limited to only their own beer by the glass, bottle or can for consumption on the premises. Similarly,

distilleries could sell only their own liquor by the glass. With the passage of Act 39, breweries, distilleries and wineries may now stock full bars under their manufacturing licenses. Act 39 allows all manufacturers to serve wine from any Pennsylvania winery, beer and cider from Pennsylvania breweries, and liquor from Pennsylvania distilleries, see 47 P.S. Section 446(a)(2), 47 P.S. Section 5-505.4(c)(1), 47 P.S. Section 5-505.2(a)(6.1). Breweries may sell beer from other Pennsylvania breweries, and distilleries may sell liquor from other Pennsylvania distilleries in addition to their own. These changes transform breweries and distilleries from niche destinations for fans of particular brands to exciting alternatives to the typical bar and restaurant model.

**BREWERIES, DISTILLERIES AND  
WINERIES ARE NOT SUBJECT  
TO COUNTY QUOTAS.**

Notably, brewery, distillery and winery licenses are not subject to the quota system.

The Pennsylvania Liquor Code's quota system caps the number of retail liquor licenses in each county

based on the population. As most counties have been over their quota for decades, to open a new bar or restaurant, an aspiring restaurateur must purchase an existing license from another bar or restaurant that has closed. The market for these licenses is not controlled or regulated by the Pennsylvania Liquor Control Board (PLCB). The prices for liquor licenses vary greatly from county to county—from a going rate of about \$200,000 in Philadelphia to over \$500,000 in suburban counties where licenses are scarcer.

By contrast, a person wishing to open a brewery, winery or distillery can apply directly to the PLCB for a new license and need only pay application fees. By allowing full bars under these licenses, Act 39 has lowered the barriers to entry and opened up new possibilities and room for creativity.

## **MANUFACTURING AT BREWERIES, DISTILLERIES AND WINERIES CAN TAKE A VARIETY OF FORMS.**

To qualify for a manufacturer's license, the licensee must manufacture alcohol on the premises. However, the complexity of the manufacturing process varies. Brewers and distillers choose how much focus and creativity to devote to their manufacturing. Activities that count as manufacturing under a distillery license include "denaturing, redistilling, recovering, rectifying, blending and reusing of alcohol and liquor," 47 P.S. Section 5-501. For some distilleries, the manufacturing process taking place on the premises can be as simple as

purchasing liquor from a supplier, blending or infusing flavors and bottling. On the other end of the spectrum, many breweries brew dozens of their own beers each year, with rotating seasonal drafts and experimental brews.

## **SATELLITE LOCATIONS CREATE OPPORTUNITIES FOR EXPANSION.**

In addition to having a tasting room, bar or restaurant at the primary licensed premises where manufacturing occurs, Act 39 created further opportunities for Pennsylvania manufacturers to go to market by the drink by allowing satellite locations. Each brewery, distillery and winery licensee may have up to five additional "storage" locations where no manufacturing need take place at all. Each of the five locations may serve wine, alcohol and beer under the same conditions as the main premises. Some licensees have taken advantage of this option by turning their satellite locations into restaurants specializing in all Pennsylvania beer, wine and spirits.

## **POP-UPS ARE ANOTHER OPTION FOR CREATIVE DRINKS VENUES.**

In Philadelphia and elsewhere, the surge in craft distilleries and breweries has combined with the continuing popularity of "pop-up" bars to create a boom in the bar scene. The pop-up phenomenon began in 2012 with a change to the Liquor Code allowing restaurants and hotels to apply for and obtain off-premises catering permits to host off-site events on otherwise unlicensed premises. Each

*“Act 39 and Act 85 of 2016 brought Pennsylvania’s liquor laws a little closer to the 21st century, and opened up a new world of options in the drinks market for creative entrepreneurs.”*

licensee may obtain permits for up to 52 events per year, increased from 50 by Act 39. Because the permits were originally intended to be used for catering events such as weddings, the permit limits each event to five hours and a licensee may use no more than one permit per day. Bars and restaurants quickly realized they could string together multiple permits at the same location to open seasonal bars and beer gardens (referred to as "stacking licenses"). Events under the permits are meant to be hosted for "an identifiable group of people, not the general public," but most pop-ups circumvent this requirement by asking patrons to sign-in at the door to join the "club."

Act 39 made the requirements for obtaining off-premises catering permits more flexible by reducing the number of days written notice of an event a licensee must give the PLCB from 30 to 14 and giving the PLCB the option to waive the 14-day requirement as long as seven days' notice is provided, 47 P.S.

Sections 4-406(f)(10)), 4-442(f)(9) (iii), 4-446(b)(10)(iii). In addition, whereas previously all applications for catering permits for the year had to be submitted before March 1, licensees can now apply for the permits at any time, as long as it's at least 60 days before an event.

Over the past seven years, the pop-up trend has evolved from a few picnic tables in underused lots to major installations returning each summer and holiday-themed bars appearing throughout the year, and it seems likely to grow from here.

## **BREWERIES CAN NOW SELL AT FARMERS' MARKETS AND FESTIVALS.**

Under Act 39, brewery licensees may now obtain permits to participate in "expositions" such as fairs or festivals for up to 100 days a year and up to 30 consecutive days. At expositions, breweries can sell their own brews by the glass, bottle or can for immediate consumption and by the growler or package up to 192 fluid ounces for takeaway. These permits give breweries more options for participating in community events such as craft fairs and street festivals.

In addition, breweries can obtain an unlimited number of permits to sell their own brews at farmers' markets. Similar to the exposition permits, at farmers' markets brewers can sell by the glass, bottle, or can for immediate consumption and by the growler or package up to 192 fluid ounces for takeaway.

Farmers' market permits help craft brewers tap into the growing market for locally sourced and

produced goods. Customers looking to shop local can buy local beer at the same place they get their local produce, meats and dairy.

## **BARS IN GROCERY STORES AND BEER AND WINE IN GAS STATIONS.**

Grocery and convenience stores are another new place Pennsylvanians can stop in for a drink. Act 39 created wine expanded permits for restaurants, allowing restaurant licensees to sell wine to-go, up to three liters of wine in a single sale, see 47 P.S. Section 4-415. Beer-to-go was already allowed under most restaurant licenses.

Just as essential to making wine and beer sales in grocery stores possible, since the passage of Act 39 the PLCB has been more liberal in approving so-called "interior connections" between licensed establishments and other businesses. Historically, the PLCB has strictly enforced the Liquor Code's prohibition on licensed businesses overlapping or intermingling with nonlicensed businesses. Therefore, a restaurant serving alcohol and another business such as a grocery store could not share a space without special permission from the PLCB.

While so-called interior connections still require board approval, Act 39 makes clear the intention to allow wine and beer sales in grocery stores under certain conditions. Sales of wine must occur at a specifically designated area of the premises and there must be a designated cash register for all wine sales. The wine cashier must be 18 years of age or older and Responsible

Alcohol Management Program (RAMP)-certified. See 47 P.S. Section 4-415(a)(9).

Before Act 39, the Liquor Code explicitly prohibited the sale of liquid fuels or oil in proximity to licensed premises, which in practice translated to a complete ban on alcohol sales at gas stations and convenience stores. Act 39 removed the prohibitive language. Interior connections between licensed premises and locations that sell fuels are now permissible with PLCB approval. Wawa and other convenience stores have jumped on the opportunity to sell beer-to-go.

The same restaurant licenses that allow grocery stores and convenience stores to sell wine and beer-to-go allow the licensees to operate full-service bars. Increasingly, markets such as Whole Foods and Wegmans are taking advantage of this option with surprisingly appealing wine bars and brewpubs.

## **LOOKING TO THE FUTURE.**

Act 39 and Act 85 of 2016 brought Pennsylvania's liquor laws a little closer to the 21st century, and opened up a new world of options in the drinks market for creative entrepreneurs. Pennsylvanians are already benefiting from a wider variety of venues to enjoy a beverage and there is opportunity for more creative concepts in the future. ●