

January 9, 2017

Christina Schauer
Administrator for The Daniel Perich Group
KW Commercial, The Daniel Perich Group
744 Main Street, Second Floor
Stroudsburg, PA 18360
VIA E-MAIL

RE: Distributors and Act 166 of 2016

Dear Ms. Schauer:

ISSUE: This correspondence is in response to your e-mail of December 13, 2016, wherein you indicate that you have a client who is looking to sell its beer distributorship and would like clarification regarding the recent amendments to the Liquor Code pertaining to distributor licenses. You explain that you have tried to find this information on the Pennsylvania Liquor Control Board's ("PLCB") website, but were unsuccessful in your search.

OPINION: As you appear to be aware, the Legislature recently voted to pass House Bill 1196, which was signed by Governor Wolf and designated as Act 166 of 2016 ("Act 166") on November 15, 2016. Act 166 will become effective on January 17, 2017.

Among other things, Act 166 amends the Liquor Code to allow distributors and importing distributors to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption.¹ 47 P.S. §§ 1-102, 4-431(b). These sales do not have to be in the manufacturer's original configuration and can be sold in refillable growlers that can be resealed. Id. However, Act 166 did not change the packaging rules for distributor and importing distributor sales to licensees.

Act 166 also amends the Liquor Code to preclude a distributor from selling or delivering malt or brewed beverages to any licensee whose licensed premises is located within the

¹While the Legislature only used the term "distributor" when amending section 431(b), in conferring with the legislative staffers, it was the intent of the Legislature to have the provision apply to both distributors and importing distributors. This is consistent with how the term "distributor" is used in sections 471.1(g) and 472(d)(3) of the Liquor Code.

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designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. 47 P.S. § 4-431(b). If the licensee purchasing the beer from the distributor holds multiple licenses or operates at more than one location, then the beer may not be consumed or sold at licensed premises located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. Id. A licensee accepting delivery and/or transferring malt or brewed beverages in violation of this provision shall be subject to a suspension of at least thirty days. Id.

All of the changes made by Act 166, including those discussed above, are summarized in the document entitled “Summary of Act 166 of 2016,” which is accessible on the PLCB’s website, www.lcb.pa.gov, by placing your cursor over the “Legal” menu tab, selecting the link for “Legislative Updates,” and then selecting “Act 166 of 2016.” This document was added to the PLCB’s website on December 28, 2016.

Thank you for your inquiry. If you have any further questions or concerns regarding this matter, the Liquor Code, or the PLCB’s Regulations, please do not hesitate to again contact this office.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-568