



August 1, 2024

### **Summary of Act 86 of 2024**

On July 17, 2024, Governor Shapiro signed Senate Bill No. 688 into law, now known as Act 86 of 2024 (Act 86).

Act 86 introduces the sale of ready-to-drink cocktails (“RTDC”) to the Liquor Code. The changes become effective on September 16, 2024.

Questions about these changes or any other provisions of the Liquor Code may be directed to the PLCB’s Office of Chief Counsel at [ra-lblegal@pa.gov](mailto:ra-lblegal@pa.gov).

Act 86 defines RTDC as pre-mixed drinks made from distilled liquor and other nonalcoholic liquids, packaged by the manufacturer in containers of up to 16 ounces. RTDC shall have alcohol by volume in the range of 0.5% to 12.5%. RTDC shall not include wine or malt or brewed beverages and shall be considered “liquor.” 47 P.S. § 1-102.

Restaurant, hotel, distributor and importing distributor licensees may apply for and obtain RTDC permits, which allow them to sell RTDC-to-go on Mondays through Saturdays until 11:00 p.m. Restaurant and hotel licensees with a Sunday sales permit may sell RTDC until 11:00 p.m. on Sundays. Distributor and importing distributor licensees with a Sunday sales permit may sell RTDC until 9:00 p.m. on Sundays. 47 P.S. §§ 4-415.1(a), 4-431.2.

- There is a \$2,500 application fee for the RTDC permit and an annual renewal fee of 2% of the cost of RTDC purchased for off-premises consumption, whether purchased from the Board or a licensed Pennsylvania manufacturer. 47 P.S. § 4-415.1(b)(2).
- A permit cannot be issued to a licensee whose license is subject to a pending objection from Licensing. However, if the licensee already holds the permit, it can continue to use it while the licensing matter is pending. 47 P.S. § 4-415.1(a)(3).

## Privileges of a RTDC Permit Holder:

- A RTDC permit holder may sell RTDC “to-go,” 47 P.S. § 4-415.2. Licensees that do not hold a RTDC permit may not sell RTDC “to-go.” 47 P.S. § 4-493(36). Retail licensees that may sell liquor for on-premises consumption may sell RTDCs for on-premises consumption.
- A RTDC permit holder may only sell RTDC to unlicensed people or entities (not other RTDC permit holders or licensees). 47 P.S. §§ 4-415.1(d), 4-441(b)(2).
  - A restaurant or hotel licensee with a RTDC permit may sell up to 192 ounces of RTDC in a single sale. 47 P.S. § 4-415.1(d). These ounces shall not be combined with the amount of wine or malt or brewed beverages purchased for the purpose of calculating the maximum amounts that may be purchased in a single sale.

In other words, a licensee with both a RTDC permit and a Wine Expanded Permit may sell, in a single sale, 192 ounces of RTDC **and/or** 192 ounces of malt or brewed beverages **and/or** 3 liters of wine.

- A distributor or importing distributor with a RTDC permit may sell RTDC in any quantity, and all sales must be in original containers. 47 P.S. §§ 4-415.1(d), 4-441(b)(2).
- A distributor or importing distributor with a RTDC permit may allow on-premises consumption of RTDC solely for the purpose of conducting tastings of RTDC in accordance with Board regulations pertaining to tastings for liquor. 47 P.S. §§ 4-431.2, 4-441(b)(1); 40 Pa. Code § 13.211.
- Sales of RTDC must occur at a specifically designated area of the licensed premises, but other (non-alcoholic) items may be purchased at the same location. 47 P.S. § 4-415.1(a)(4).
- Sales of RTDC must occur at a designated register staffed at all times by a cashier who is at least eighteen years old and RAMP-trained. No sales may occur

elsewhere, including self-checkout lanes. 47 P.S. § 4-415.1(a)(9). With that said, the same exceptions applicable to WEP holders also apply to RTDC permit holders.

- A permittee must use a transaction scan device to verify the age of anyone who appears to be under 35 years old. 47 P.S. § 4-415.1(a)(8).
- A permittee cannot sell RTDC-to-go for a price lower than the price at which it purchased the product. 47 P.S. § 4-415.1(f).
- A permittee may not sell a private label product, which is defined as a product made under contract by a manufacturer/its agent for the exclusive right of a retailer. 47 P.S. §§ 1-102, 4-415.1(g).
- A permittee must comply with all components of Responsible Alcohol Management Program (RAMP) certification. 47 P.S. §§ 4-415.1(a)(6), 4-471.1.
- RTDC may be stored in a non-contiguous area that is not accessible to the public, is locked at all times and is not accessible to employees under 18 years old. 47 P.S. § 4-415.1(a)(7).
- RTDC permit holders must pay sales tax on purchases of RTDC made from the PLCB at the time of purchase, just as they would for any other product purchased from the PLCB. Permittees are also required to collect the sales tax from the consumers to whom they sell RTDC to-go. Permittees can then seek reimbursement from the Department of Revenue for the sales tax previously paid to the PLCB. 47 P.S. § 4-415.1(e).
- Note that similar to beer and wine, RTDC permit holders (other than distributors and importing distributors) will be required to allow RTDC to be consumed on-premises; they cannot operate solely as an off-premises retailer of those products.

### **Obtaining RTDC for Purposes of Resale on a To-Go Basis to Consumers:**

- A RTDC permit holder may purchase RTDC from the PLCB for purposes of resale on a to-go basis to consumers. 47 P.S. § 3-305(b). However, RTDC permit holders

may not purchase RTDC through the PLCB's Special Order process under any circumstances. 47 P.S. § 3-305(a.2)(1).

- A RTDC permit holder may also purchase RTDC for purposes of resale on a to-go basis from a "licensed Pennsylvania manufacturer" ("LPM"), which is defined to include all active limited distillery licensees and any distillery licensee which previously held an active limited distillery license before July 1, 2024. 47 P.S. § 4-415.1(i).

### **Sales of RTDC by LPMs:**

- LPMs may sell RTDC to RTDC permit holders for resale on a to-go basis to consumers. 47 P.S. § 4-415.1(h).
- LPMs are not required to obtain RTDC permits to engage in sales of RTDC to consumers or RTDC permit holders. 47 P.S. § 4-493(36)(i).
- LPMs may sell RTDC in any quantity to consumers or RTDC permit holders.
- LPMs may not sell an RTDC to consumers or permittees at a price less than what Board charges for the same RTDC. 47 P.S. §§ 5-505.4(b)(1), (c)(1).
- LPMs must, upon request, offer to sell to the PLCB any RTDC that it sells. 47 P.S. § 5-505.4(d).
- If selling to RTDC permit holders, LPMs must file quarterly reports stating the quantity of product sold to each permittee, the purchase price to permittees and the name or brand of the product sold. 47 P.S. § 5-505.4(e).

### **Sales of Liquor for On-Premises Consumption**

- Generally, Act 86 does not impact the authority of a retail licensee to continue selling liquor for on-premises consumption in accordance with its license.
  - This includes the ability to purchase an alcoholic beverage that meets the definition of an RTDC from the Board or an LPM and to resell it to consumers for on-premises consumption only. 47 P.S. § 4-493(36)(ii).

- Except as noted below, this also includes the ability to purchase liquor, including an alcoholic beverage that meets the definition of an RTDC, through the PLCB's Special Order process and then resell it to consumers for on-premises consumption only. 47 P.S. §§ 3-305(a.2)(2), 4-493(36)(iii).
- However, the holder of an RTDC permit is precluded from purchasing an alcoholic beverage that meets the definition of an RTDC through the PLCB's Special Order process, even if it intends to sell such product for on-premises consumption only. In other words, a retail licensee that had been purchasing what are now defined as RTDC through Special Order may no longer be able to acquire or sell RTDC through Special Order for on- or off-premises consumption if that licensee obtains a RTDC permit.
- An RTDC permit is not required for a retail licensee whose license authorizes the sale of liquor for on-premises consumption to sell an alcoholic beverage that meets the definition of an RTDC for on-premises consumption only.