

What Licensees Should Know About Act 90 of 2013

On November 27, 2013, Governor Corbett signed House Bill No. 1098 into law. Now known as Act 90 of 2013, the bill made numerous changes and added a new chapter to the Local Option Small Games of Chance Act (“LOSGCA) [10 P.S. § 328.101 *et seq.*], which will allow certain licensees to obtain a “tavern gaming license” and sell certain small games of chance (“SGOC”). The changes, most of which go into effect on January 27, 2014, are summarized below. Other changes to the LOSGCA are generally not addressed in this summary, as the Pennsylvania Liquor Control Board (“PLCB”) is not authorized to interpret the LOSGCA. For information about the LOSGCA, please visit the websites of the [Pennsylvania Department of Revenue](#) or the [Pennsylvania State Police, Bureau of Liquor Control Enforcement](#) (“BLCE”). If you have any questions about the “tavern gaming license,” or about provisions of the Liquor Code, you may contact the PLCB’s Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA 17124, phone 717-783-9454.

Who do the changes affect?

The changes may impact club licensees and hotel, restaurant, privately-owned public golf course, brew pub, or brewery licensees.

What is different for club licensees?

There are several changes that will affect club/catering club licenses that hold SGOC permits.

Reports

Beginning in 2014, if proceeds from SGOC exceed \$20,000 in a calendar year, the club must submit an annual report to the Department of Revenue for the preceding twelve (12) months. The report shall include:

- Proceeds received from each SGOC, by week
- Amount of prizes paid for each SGOC, by week
- Other costs incurred
- Verification and itemization of amounts distributed for public interest purposes

If the proceeds do not exceed \$20,000 per year, no report is required.

Proceeds

Proceeds from SGOC are distributed in this way:

- At least 60% must go for public interest purposes within one year of the end of the calendar year when the proceeds were obtained.
- No more than 40% may be retained by the club to be used however the club wants, except for payment of fines. (Other restrictions were deleted.)
- The amount retained must also be spent within one year of the end of the calendar year when it was obtained, unless it is retained longer for a substantial public interest purchase/project.

If the yearly proceeds are \$40,000 or less, the club can retain the first \$20,000 in proceeds in the following year.

Records

Records must be maintained for SGOC since random audits may occur, but the club no longer has to maintain records related to the printing/purchase of raffle tickets.

Questions on these changes involve an interpretation of the LOSGCA, which is not part of the Liquor Code. Therefore, all questions should be addressed to the PA Department of Revenue or the BLCE (see above).

What is a “tavern gaming” or “tavern game” license?

A tavern gaming license is a new kind of license that may be issued by the PLCB to certain types of licensed entities.

Who may obtain a tavern gaming license:

- A “tavern” is defined as a “for-profit” hotel, restaurant, privately owned public golf course, brew pub or microbrewery with a valid license to sell liquor or beer under the Liquor Code and which is located in a municipality that allows Small Games of Chance.
- A “tavern” does not include the following:
 - A grocery store, including a restaurant with an interior connection to a grocery store;
 - A restaurant where the sale of liquid fuels or oil is conducted;
 - A hotel or restaurant located in a casino; or
 - A business on the grounds of a public venue facility where a major league sports team or racing facility conducts games or races.
- A “tavern gaming license” cannot be issued to:
 - A “tavern” whose liquor license is in safekeeping; or

- A location where the PLCB’s Bureau of Licensing has objected to the renewal of the liquor license and such renewal is pending; or
 - A location where, the BLCE has issued a citation against the liquor license and where the administrative law judge has issued a suspension of the license, and that suspension is pending; or
 - A location where the liquor license has been revoked, and therefore a liquor license may not be issued or transferred to that location for a period of one year from the date of revocation; or
 - A place of business that has been decreed a nuisance pursuant to section 611 of the Liquor Code; or
 - Any person who has been convicted of a felony offense or misdemeanor gambling offense, in any jurisdiction, within the past 15 years.
- At this time, it does not appear that a “tavern” includes other types of licensees, such as eating place malt beverage licensees or stand-alone breweries.

What are the privileges of a tavern gaming license?

The holder of a tavern gaming licensee may offer to its patrons three types of small games of chance to play: pull tabs, tavern daily drawings, and tavern raffles.

- **Pull tabs** are defined in the LOSGCA as “A single folded or banded ticket or a strip ticket or card with a face covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner.”
- **Tavern daily drawings** are defined as games in which a person selects or is given a number for a chance at a prize. The winner is chosen by random drawing. Chances may not be sold for more than one dollar and no more than one chance per person may be sold per drawing.
- **Tavern raffles** are defined as raffles held, in part, for a charitable or public purpose, subject to the following restrictions:
 - No more than one tavern raffle may be held in a calendar month.
 - The tavern raffle must be held for a designated charitable purpose, and each person participating in the tavern raffle must be informed about the charitable purpose involved.
 - At least 50% of the net revenues from the tavern raffle must be given to the designated charity within seven (7) days of the raffle.
 - Any net revenues not given to the designated charity shall be distributed as follows:
 - 60% shall be paid to the Commonwealth (the Tavern Games Tax)

- 35% may be retained by the licensee
 - 5% shall be paid to the Commonwealth for payment to the host municipality (the Host Municipality Tavern Games Tax)
- If a tavern raffle prize goes unclaimed by a winner for 60 days after the raffle was held, the prize shall be donated to the designated charity within the next 30 days.
- A distinction is made in the Act between games that have to be purchased from a licensed distributor of small games of chance and those that do not. This distinction impacts the calculation of net revenue, the payment of taxes, the filing of tax returns and other reporting requirements. According to Revenue's Regulations, pull tabs must be purchased from a licensed distributor of small games of chance. [61 Pa. Code § 901.533]. The other tavern games – tavern daily drawings and tavern raffles – are not required to be purchased by a licensed distributor.
- **Prize limits:** The maximum prize for any single chance is \$2,000. No more than \$35,000 in prizes may be awarded from tavern games by a tavern games licensee in a seven (7) day period.

How much does a tavern gaming license cost?

- An applicant for a tavern gaming license must pay the PLCB a nonrefundable application fee of \$1,000.
- An applicant for a tavern gaming license must pay the Gaming Control Board an investigative fee of \$1,000, plus any actual costs of a background investigation conducted by Gaming that exceeds the fee.
- Upon approval, the tavern gaming licensee must pay a license fee of \$2,000. The license is renewed annually with the PLCB, and the annual renewal fee is \$1,000. If, however, the PLCB decides that the renewal application needs to be investigated by Gaming, the applicant will have to pay the investigative fee referenced above.

Are tavern gaming licenses transferable?

No, tavern gaming licenses are not transferable. It cannot be sold, transferred or assigned to any other person. Nor can a licensee pledge or grant a security interest in or lien on the tavern gaming license.

- A tavern gaming licensee must notify the PLCB of a change in ownership of the licensed premises or the sale or transfer of the liquor license.

Must the licensee have a separate bank account for tavern games proceeds?

Yes. A tavern gaming licensee must maintain a bank account to hold the net revenue from tavern games, which shall be separate from all other funds belonging to the licensee. The account's records have to show all expenditures and income and shall be retained by the licensee for at least two years.

Are there special rules about advertising tavern games?

Yes. All tavern gaming licenses are subject to the restrictions on advertising set forth in section 704 of the LOSGCA, which makes it generally unlawful to advertise the prizes or their dollar value to be awarded in games of chance (although prizes may be identified on raffle tickets).

How do you apply for a tavern gaming license?

Applications are filed with the PLCB, on forms that will be drafted and provided by the PLCB. Required information includes:

- Name, address, and photograph of the applicant
- Current tax clearance certificates from the Departments of Revenue and Labor & Industry
- A listing of any other liquor or gaming licenses applicant has an interest in
- A certified consent by the applicant to a background investigation by Gaming
- Disclosure of all arrests and citations of the applicant, including non-traffic summary offenses
- Financial interests and transactions as required by Gaming
- Disclosure of any conditional licensing agreement
- Any other information required by the PLCB

What happens to the application?

Gaming will conduct a background investigation of the applicant. This may include a personal interview with applicant and may entail other information regarding applicant's fitness for a tavern gaming license. Once Gaming is finished with its investigation, it will send its report, along with possible recommendation, to the PLCB.

Upon receipt of Gaming's report, the PLCB will review the information to determine if the applicant is financially stable and responsible, has sufficient business experience and the ability to effectively operate tavern games, and has a good character. The PLCB has six months upon receipt of the investigation report to approve or disapprove the application. The PLCB may deny the application if:

- The applicant's liquor license is in safekeeping

- The licensed premises is subject to a pending renewal objection or
- There is a pending license suspension or a one year prohibition on the issuance/transfer of a license.

How long does a tavern gaming license last?

If the PLCB approves the application, it will issue a tavern gaming license for a one year period. The license must be renewed annually, and it is anticipated that the licensing term will coincide with the liquor license licensing term.

Can conditions be placed on a tavern gaming license?

Yes. The PLCB and the applicant can enter into a conditional licensing agreement which imposes additional restrictions on the license.

Can a tavern gaming license be suspended or revoked?

Yes. The PLCB has the sole authority to issue, renew, condition, suspend, revoke, or deny such a license. The BLCE can also issue citations for violations of the law. In addition to other violations, the Act makes it unlawful for a tavern gaming licensee to:

- Allow a person under 21 years old to play, attempt to play, or otherwise participate in a tavern game.
- Permit an employee less than 18 years old to operate tavern games.
- Sell, operate, or otherwise participate in the conduct of tavern games if an employee has been convicted in any jurisdiction of a felony or misdemeanor gambling offense within the past 15 years.
- Participate in the tavern game, unless the game is a tavern raffle.

The PLCB may, following notice and a hearing, impose penalties or suspend or revoke a tavern gaming license. It may impose the following penalties:

- Up to \$2,000 for a first violation.
- Up to \$3,000 for a second violation.
- Up to \$5,000 for a third violation.

The BLCE may also issue citations to licensees for violations of this Act, subject to the same penalties as stated above. An aggrieved party may appeal to the PLCB for review of the administrative law judge’s determination.

In addition, a first violation of the Tavern Gaming provisions of the LOSGCA is a third degree misdemeanor. A second or subsequent offense shall be a second degree misdemeanor.

The PLCB may also suspend, revoke, or fail to renew a tavern gaming license, in its discretion, if it determines that:

- The applicant or any of its officers, directors, owners or employees is in violation of any provision of the Tavern Gaming provisions of the LOSGCA or furnished the PLCB with false or misleading information; or
- The information contained in the applicant's initial application or renewal application is no longer true and correct.

In the event of a revocation, suspension or failure to renew, the applicant's authorization to conduct tavern games shall immediately cease, and all fees paid in connection with the license are deemed forfeited. If the license is suspended, the applicant's authorization to conduct tavern games shall immediately cease until the PLCB notifies the applicant that the suspension is over.

There are numerous other provisions of the Act regarding percentages and payment of taxes, annual reports, and other topics that will impact tavern gaming licensees. Questions regarding those issues are best addressed by the Department of Revenue or the BLCE.