

Tax Alert



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Changes to Miscellaneous State Business Licenses in 2022 Senate Bill 496

This alert explains the impact of 2022 Senate Bill 496, Business Regulation – Miscellaneous State Business Licenses, on licensees and the County Clerks who issue the licenses. This is not a comprehensive summary of the bill, but a brief guide to some impactful provisions.

Introduction

In 2022, the Maryland General Assembly passed Senate Bill 496. The bill was proposed by the Maryland Circuit Court Clerk's Association for the purpose of modernizing and updating business licenses for the State to reflect today's modern technology and practices.²

Language was updated to allow electronic processes, to repeal certain low-volume licenses,³ and to clarify language excluding nonprofits and government entities from the licensing requirements. The Comptroller is required to make license materials available to the Clerks on or before April 1 each year.

Specific changes to certain licenses are described below.

Additional Details

¹ This Tax Alert was updated on November 14, 2022, and superseded the Tax Alert published on October 25, 2022.

² https://mgaleg.maryland.gov/mgaweb/Committees/Media/false?cmte=fin&sys=2022RS&clip=FIN_2_24_2022_meeting_1&url=https%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Ffccb4fb7-3d50-43e6-830a-36c5877055a8%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D111080

³ The licenses eliminated are the licenses for console machines, pinball machines, amusement devices, billiard tables, juke boxes, wholesale farm machinery dealers, plumbers, and trading stamp issuers.

Nonresident construction businesses are now required to get a license in only in the first county where they do construction business in the state in that year. Additional licenses for each contract are no longer required.⁴

Storage warehouses must obtain a storage warehouse license.⁵ After legislative changes in 2022, a person must have a storage warehouse license whenever the person keeps a storage warehouse where goods are stored for a fee in the State.

Generally, a person who does business as a **trader** or exhibitor in the State must have a trader's license. **Mobile places of business** operating in more than one location must also have a peddler's license.⁶

- In **Anne Arundel, Baltimore, Calvert, Cecil, Howard, Montgomery, and Prince George's** counties, a trader's license issued to a peddler authorizes the holder of the trader's license to act as a peddler, but only in the county where the trader's license was issued.⁷
- In the counties named above, a peddler with a trader's license does not need an additional **State** peddler's license. Each county named has its own licensing requirements for peddlers, hucksters, and other itinerant businesses with no fixed location.
- A peddler's license is required in **Calvert County**, however, if the person sells vegetables, eggs, poultry, meats, or other farm products, dry goods, or clothing.⁸

Restaurants are defined as an establishment that “(1) accommodates the public; (2) provides seating; and (3) is equipped with facilities for preparing and serving food.”⁹

- **Restaurants** must obtain a **restaurant license**.¹⁰
- **Restaurants** are not required to obtain a **trader's license**.¹¹

Chain stores are two or more retail stores operated under common or shared management, supervision, or ownership, regardless of corporate form, purpose, or structure.¹²

⁴ Business Regulation § 17-602(c)(2), Maryland Code Annotated

⁵ The version of this Tax Alert published October 25, 2022, stated, “[s]elf-storage warehouses are excluded from this requirement. A self-storage warehouse is not required to obtain a storage warehouse license.” The definition of “storage warehouse” proposed in SB 496’s amendments to Bus. Reg. §17-1202(b) originally read, “‘storage warehouse’ means a building or structure used for keeping goods for a fee, *including self-storage warehouses.*” After testimony objecting to the inclusion of self-storage warehouses in the definition, the phrase, “including self-storage warehouses” was stricken from the amendments in the bill. However, the plain language of the definition of “storage warehouse,” – “a building or structure used for keeping goods for a fee” - includes self-storage warehouses. Because self-storage warehouses are not specifically excluded from the license requirement, self-storage warehouses are required to obtain a storage warehouse license.

⁶ Bus. Reg. § 17-1803(c)

⁷ Bus. Reg. §§ 17-1808(c), 17-905(a)

⁸ Bus. Reg. § 17-917(a)

⁹ Bus. Reg. § 17-1601(b)

¹⁰ Bus. Reg. § 17-1603

¹¹ Bus. Reg. § 17-1803(d)(4)

¹² Bus. Reg. § 17-17A-01(b), (c)

- Chain stores must obtain a **chain store license**.¹³
- Chain stores are also required to have a **trader's license** for each store.¹⁴
- **Chain restaurants** are covered by the definition of “restaurants,”¹⁵ and are not chain stores. Chain restaurants are not required to obtain a chain store license.
- **Retail service station dealers** are not required to obtain a chain store license, even if they would otherwise meet the definition of a chain store.¹⁶

Restaurants that are also traders; Traders that also sell food

Generally, a person doing business in the state must have a trader's license, unless otherwise provided by law. Senate Bill 496 created a new definition for restaurants,¹⁷ and specifically exempted restaurants from the requirement to obtain a trader's license.¹⁸ It is the Comptroller's interpretation that a business that meets the definition of a restaurant is not required to have a trader's license, even if it happens to also sell goods¹⁹ at wholesale or retail.

Likewise, a trader²⁰ who happens to sell some food items but who does not accommodate the public, provide seating, and is not equipped with facilities for preparing and serving food is not a restaurant, does not require a restaurant license, but must have a trader's license.

The Comptroller is authorized to adopt regulations to carry out its licensing duties and to define any licensing term.²¹ The Comptroller may, in the future, adopt regulations on licensing requirements for mixed restaurant/trader businesses, or any other licensing matter, that alter the guidance given in this Tax Alert.

Questions and Answers

1. *The Tax Alert says “[r]estaurants, except in Montgomery County, must obtain a restaurant license” and cites Bus Reg §17-1603 as the reason. Are businesses still required to obtain restaurant licenses? What is the effect if trader's licenses are required (§17-1803) but restaurant licenses are not?*

¹³ Bus. Reg. § 17-17A-03

¹⁴ Bus. Reg. § 17-17A-03

¹⁵ Bus. Reg. § 17-1601(b)

¹⁶ Bus. Reg. § 17-17A-02

¹⁷ “an establishment that (1) accommodates the public; (2) provides seating; and (3) is equipped with facilities for preparing and serving food.” Bus. Reg. § 17-1601(b).

¹⁸ Bus. Reg. § 17-1803(d)(4)

¹⁹ “Goods” are tangible personal property, items of trade, merchandise, or other types of products sold at wholesale or retail. Bus. Reg. § 17-101(b)

²⁰ A “trader” is a person who operates a room or other place of business for selling goods. Bus. Reg. § 17-101(g)

²¹ Bus. Reg. § 17-202(f)

See the text of the current statute here:

<https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gbr§ion=17-1603&enactments=False&archived=False>.

A restaurant that is required to have a restaurant license is not required to have a trader's license. All restaurants except those in Montgomery County are required to have a restaurant license. Montgomery County restaurants are not bound by the Restaurant subtitle (see Bus Reg 17-1602 here: <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gbr§ion=17-1602&enactments=False&archived=False>) Montgomery County restaurants are required to have a trader's license, because they are not covered by the statute that excludes restaurants from the trader's license requirement (see Bus Reg 17-1803(d)(4) here: <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gbr§ion=17-1803&enactments=true>)

- 2. How are current license holders being informed of the Tax Alert detailing the changes in business licensing? Is it only publishing of the tax alert on the Comptroller's website, or will Comptroller be mailing updates to all license holders?*

The Comptroller publishes guidance on its webpage. The Comptroller's Office is available to collaborate with Clerks on an insert for the Clerks' pre-renewal mailing. Clerks can direct businesses to the Tax Alert. Businesses may also consult their trade organizations, such as the Maryland Restaurant Association, for additional information.

- 3. Mobile places of business operating in more than one location must also have a peddler's license. Does this include someone who sets up a table at the farmers market, then next week at a high school vendor event, then off to the fair?*

A peddler is a person who (1) does not have a fixed place of business located in a physical structure and (2) moves from house to house or place to place carrying articles of merchandise to be sold and delivered concurrently. A farmer's market vendor who does not also have a fixed place of business must have a peddler's license.

The Comptroller will consider a regulatory definition of "temporary stand."

- 4. Restaurants, except those in Montgomery County, are no longer required to have a trader's license. Are restaurants still required to have zoning approval before being issued a license?*

Under current statutes, zoning approval requirements only apply to the issuance of trader's licenses. Businesses that are not required to have a trader's license are not required to have zoning approval before being issued a restaurant license.

- 5. Are there different fees for resident and nonresident junk dealers or scrap metal processors?*

No, the revised law eliminates the disparity between license fees for resident and nonresident applicants for a junk dealer or scrap metal processor license; however, if a nonresident establishes a fixed place of business in the State, the nonresident must obtain a (resident) junk dealer or scrap metal processor license and comply with all related laws and regulations.

- 6. How will delinquent licenses from previous years be handled, i.e., if an applicant needs to bring their licenses up to date, will old license be issued under the new guidance?*

The new (current) statutes took effect October 1, 2022.

Businesses that successfully renewed on May 1, 2022 will renew under the current statutes May 1, 2023.

Businesses that were due to renew May 1, 2022, but are not yet in compliance must obtain all licenses required as of May 1, 2022, i.e., under the old statutes.

New businesses must apply for licenses under the current statutes.

7. Even though an applicant with a restaurant license is not required to get a trader's license, can they still receive one if they voluntarily want to request it? And if so, will SLB then request we delete the traders license from the system because it is unnecessary, like they do construction firm businesses that hold an MHIC but are forced to purchase the construction license because some county permits offices require it?

Clerks should not issue licenses that the applicant is not required to have. However, SLB will take no action if a Clerk issues an unnecessary license. SLB will process the license.

8. A chain store license is not required when a retail service station dealer's "principal business" is the sale or distribution of motor fuel. What does "principal business" mean?

As indicated in the introductory paragraph, this Tax Alert is not meant to be a comprehensive summary of all aspects of licensing law. Defining "principal business" is outside the scope of the Tax Alert. The Comptroller will consider defining "principal business" by regulation.

9. Do nonresident construction companies need both a construction license and a nonresident construction license?

A construction license and a nonresident construction license are separate licenses. Both authorize the licensees to do construction business in the State. A nonresident construction company is required to obtain only a nonresident construction license.

10. In which county should a nonresident construction business renew its license if it is licensed in multiple counties?

Licenses are effective on May 1 and expire on April 30.²² A nonresident construction business must apply for and be issued a nonresident construction license in the county where they first do business each year.²³ This may mean that a nonresident construction business applies for a nonresident construction license in a different county from year to year.

11. When should the clerk issue a license for a self-storage warehouse?

Under Business Regulations § 17-1201, a storage warehouse is a building or structure used for keeping goods for a fee. The statute, as written, makes no distinction between a storage warehouse and a self-storage warehouse. All storage warehouses must have a storage warehouse license.

12. With these law changes, how should clerks handle license renewals?

The Clerks should change the license in the system before the renewal application goes out. An insert drafted in collaboration with the Comptroller should be included in the renewal mailing. The Comptroller's Office and the clerks will communicate on how best to proceed.

13. Is there a hardcopy booklet that the Clerks can use for reference?

With the availability of free access to statutes and regulations online, the Comptroller's Office has

²² Bus. Reg. § 17-305

²³ Bus. Reg. § 17-602(c)(2)

discontinued distributing paper law books to businesses.