

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 890 Session of
2007

INTRODUCED BY TURZAI, CALTAGIRONE, EVERETT, GABIG, GIBBONS,
GINGRICH, KILLION, MARSICO, McILHATTAN, R. MILLER, MUSTIO,
O'NEILL, RAPP, REICHLEY, ROAE, ROHRER, ROSS AND SCHRODER,
MARCH 19, 2007

REFERRED TO COMMITTEE ON LIQUOR CONTROL, MARCH 19, 2007

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as
2 reenacted, "An act relating to alcoholic liquors, alcohol and
3 malt and brewed beverages; amending, revising, consolidating
4 and changing the laws relating thereto; regulating and
5 restricting the manufacture, purchase, sale, possession,
6 consumption, importation, transportation, furnishing, holding
7 in bond, holding in storage, traffic in and use of alcoholic
8 liquors, alcohol and malt and brewed beverages and the
9 persons engaged or employed therein; defining the powers and
10 duties of the Pennsylvania Liquor Control Board; providing
11 for the establishment and operation of State liquor stores,
12 for the payment of certain license fees to the respective
13 municipalities and townships, for the abatement of certain
14 nuisances and, in certain cases, for search and seizure
15 without warrant; prescribing penalties and forfeitures;
16 providing for local option, and repealing existing laws,"
17 adding definitions; creating a class of licenses entitled
18 "grocery store licenses"; providing for provisions relating
19 thereto; and making an inconsistent repeal of provisions in
20 the Child Labor Law.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Section 102 of the act of April 12, 1951 (P.L.90,
24 No.21), known as the Liquor Code, reenacted and amended June 29,
25 1987 (P.L.32, No.14), is amended by adding definitions to read:

26 Section 102. Definitions.--The following words or phrases,

1 unless the context clearly indicates otherwise, shall have the
2 meanings ascribed to them in this section:

3 * * *

4 "Grocery store" shall mean any retail establishment commonly
5 known as a grocery store, supermarket or delicatessen, where
6 food, food products and supplies for the table are sold for
7 human consumption off the premises with average monthly sales,
8 exclusive of wine sales, of not less than five thousand dollars
9 (\$5,000) adjusted to the Consumer Price Index closest to the
10 effective date of this definition and an average monthly
11 inventory, exclusive of inventory of wine, of not less than five
12 thousand dollars (\$5,000.00) adjusted to the Consumer Price
13 Index closest to the effective date of this definition. The
14 board shall publish the adjustment as a notice in the
15 Pennsylvania Bulletin. The term "grocery store" shall also
16 include and mean a separate and segregated portion of any other
17 retail store which is dedicated solely to the sale of food, food
18 products and supplies for the table for human consumption off
19 the premises with average monthly sales with respect to such
20 separate or segregated portion, exclusive of sale of wine, of
21 not less than five thousand dollars (\$5,000) adjusted to the
22 Consumer Price Index closest to the effective date of this
23 definition and an average monthly inventory, exclusive of
24 inventory of wine, of not less than five thousand dollars
25 adjusted to the Consumer Price Index closest to the effective
26 date of this definition.

27 "Grocery store licensee" shall mean any person licensed by
28 the board to engage in the resale of wine fourteen per centum by
29 volume or less purchased from State liquor stores for
30 consumption off the premises where sold.

1 * * *

2 Section 2. Section 411 of the act is amended to read:

3 Section 411. Interlocking Business Prohibited.--(a) No
4 manufacturer or vendor and no officer or director of any
5 manufacturer or vendor shall at the same time be a holder of a
6 hotel, restaurant or club liquor license or grocery store
7 license, nor be the owner, proprietor or lessor of any place
8 covered by any hotel, restaurant or club liquor license or
9 grocery store license.

10 (b) No manufacturer, importer or sacramental wine licensee,
11 and no officer or director of a manufacturer, importer or
12 sacramental wine licensee shall own any stock or have any
13 financial interest in any hotel or restaurant or grocery store
14 licensed under this act.

15 (c) Excepting as herein provided, no manufacturer, or
16 vendor, or officer, director, stockholder, agent or employe of a
17 manufacturer or vendor shall in any [wise be interested] way
18 have an interest in, either directly or indirectly, in the
19 ownership or leasehold of any property or the equipment of any
20 property or any mortgage lien against the same, for which a
21 hotel, restaurant or club license or grocery store license is
22 granted; nor shall a manufacturer, vendor, importer or
23 sacramental wine licensee, or officer, director, stockholder,
24 agent or employe of a manufacturer, or vendor, importer or
25 sacramental wine licensee, either directly or indirectly, lend
26 any moneys, credit, or give anything of value or the equivalent
27 thereof to, or guarantee the payment of any bond, mortgage, note
28 or other obligation of, any hotel, restaurant or club licensee,
29 or grocery store licensee, his servant, agent or employe, for
30 equipping, fitting out, or maintaining and conducting, either in

1 whole or in part, a hotel, restaurant or club licensed for the
2 selling of liquor for use and consumption upon the premises.

3 (d) Excepting as herein provided, no hotel licensee,
4 restaurant licensee [or], club licensee or grocery store
5 licensee, and no officer, director, stockholder, agent or
6 employe of any such licensee shall in any [wise] way be
7 interested, either directly or indirectly, in the ownership or
8 leasehold of any property or the equipment of any property or
9 any mortgage lien against the same, used by a manufacturer or
10 vendor in manufacturing liquor or malt or brewed beverages; nor
11 shall any hotel, restaurant or club licensee or grocery store
12 licensee, or any officer, director, stockholder, agent or
13 employe of any such licensee, either directly or indirectly,
14 lend any moneys, credit, or give anything of value or the
15 equivalent thereof, to any manufacturer or vendor for equipping,
16 fitting out, or maintaining and conducting, either in whole or
17 in part, an establishment used for the manufacture of liquor or
18 malt or brewed beverages.

19 (e) Except as herein provided, no hotel, restaurant, retail
20 dispenser or club licensee or grocery store licensee, and no
21 officer, director or stockholder, agent or employe of any such
22 licensee shall in [any wise] any way be interested, directly or
23 indirectly, in the ownership or leasehold of any property or the
24 equipment of any property or any mortgage lien against the same,
25 used by a distributor, importing distributor, or by an importer
26 or sacramental wine licensee, in the conduct of his business;
27 nor shall any hotel, restaurant, retail dispenser or club
28 licensee or grocery store licensee, or any officer, director,
29 stockholder, agent or employe of any such licensee, either
30 directly or indirectly, lend any moneys, credit, or give

1 anything of value or the equivalent thereof, to any distributor,
2 importing distributor, importer or sacramental wine licensee,
3 for equipping, fitting out, or maintaining and conducting,
4 either in whole or in part, an establishment used in the conduct
5 of his business.

6 (f) The purpose of this section is to require a separation
7 of the financial and business interests between manufacturers,
8 vendors and holders of hotel or restaurant liquor licenses or
9 grocery store licenses and, as herein provided, of club
10 licenses, issued under this article, and no person shall, by any
11 device whatsoever, directly or indirectly, evade the provisions
12 of the section. But in view of existing economic conditions,
13 nothing contained in this section shall be construed to prohibit
14 the ownership of property or conflicting interest by a
15 manufacturer or vendor of any place occupied by a licensee under
16 this article after the manufacturer or vendor has continuously
17 owned and had a conflicting interest in such place for a period
18 of at least five years prior to July eighteenth, one thousand
19 nine hundred thirty-five: Provided, however, That this clause
20 shall not prohibit any hotel, restaurant or club liquor licensee
21 or grocery store licensee from owning land which is leased to,
22 and the buildings thereon owned by, a holder of a retail
23 dispenser's license; and nothing in this clause shall prevent
24 the issuance of a retail dispenser's license to a lessee of such
25 lands who owns the buildings thereon: And, provided further,
26 That nothing contained in this section shall be construed to
27 prohibit any hotel, restaurant, retail dispenser or club
28 licensee or grocery store licensee or any officer, director or
29 stockholder, agent or employe of any such licensee from having a
30 financial or other interest, directly or indirectly in the

ownership or leasehold of any property or the equipment of any property or any mortgage lien against same, used, leased by an importer or sacramental wine licensee for the exclusive purpose of maintaining commercial offices and on the condition that said property is not used for the storage or sale of liquor or malt or brewed beverages in any quantity.

Section 3. Article IV of the act is amended by adding a subdivision to read:

(A.1) Grocery Store License.

Section 420. Authority to Issue Grocery Store Licenses.--(a) Subject to the provisions of this act and the regulations promulgated under this act, the board shall have the authority to issue to any person, corporation or association operating a grocery store, a grocery store license for the premises at which the licensee operates the grocery store. The license entitles the licensee to purchase wine from the board at wholesale prices and to keep on the premises such wine and subject to the provisions of this act and the regulations made thereunder, to sell the same for off-premise consumption; and such resale may only take place when other licensees are permitted to make sales under section 406.

(b) Licenses shall be revocable by the board for cause.

(c) Grocery store licensees shall not be subject to the provisions of sections 461 and 468, clause (2) of section 491 and the provisions of the act of June 24, 1939 (P.L.806, No.358), entitled "An act limiting the number of licenses for the retail sale of liquor, malt or brewed beverages, or malt and brewed beverages, to be issued by the Pennsylvania Liquor Control Board; defining hotels, and prescribing the accommodations required of hotels in certain municipalities."

1 (d) In no event shall the board issue a grocery store
2 license for a site situate in a municipality where the sale of
3 alcoholic beverages is prohibited under the provisions of
4 section 472.

5 Section 421. License Districts; License Year; Hearings for
6 Grocery Store Licenses and Renewals.--The board may, by
7 regulation, divide the State into convenient license districts
8 and may hold hearings on applications for licenses and renewals
9 thereof, as it deems necessary, at a convenient place or places
10 in each of said districts, at such times as it shall fix, by
11 regulation, for the purpose of hearing testimony for and against
12 applications for new licenses and renewals thereof. The board
13 may provide for the holding of such hearings by examiners
14 learned in the law. Such examiners shall make a report to the
15 board in each case with their recommendations. The board shall,
16 by regulation, fix the license period and may provide for
17 staggered expiration dates.

18 Section 422. Applications for Grocery Store Licenses.--(a)
19 Every applicant for a grocery store license or for the transfer
20 of an existing license to another premises shall file a written
21 application with the board in such form and containing such
22 information as the board shall from time to time prescribe,
23 which shall be accompanied by a filing fee in an amount
24 determined by the board sufficient to cover related costs, the
25 prescribed license fee and the bond specified in this act. The
26 fee shall be the same as the application fee provided for malt
27 beverage importing distributors in section 614-A of the act of
28 April 9, 1929 (P.L.177, No.175), known as "The Administrative
29 Code of 1929."

30 (b) With initial application every applicant shall provide a

financial statement in the form and containing such information as the board shall from time to time prescribe to indicate the applicant's financial capability.

(c) With initial application and each renewal, the applicant shall identify the location and ownership of the proposed site for the grocery store license as well as proof that the place of business conforms to all health and fire laws and regulations applicable thereto.

(d) If the applicant is a natural person, his application must show that he is a citizen of the United States and a resident of this Commonwealth and is not less than eighteen years of age.

(e) If the applicant is a corporation, the application must show that the corporation was created under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania and that all officers and directors of the corporation are citizens of the United States.

(f) Each application shall be signed and verified by oath or affirmation by the owner, if a natural person, or, in the case of an association, by a member or partner thereof, or, in the case of a corporation, by an executive officer thereof or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority. If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof.

(g) Every applicant for a new license or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least thirty days beginning with the

day the application is filed with the board, in a conspicuous place on the outside of the premises or at the proposed new location for which the license is applied, a notice of such application, in such form, such size and containing such information as the board may require by its regulations. Proof of the posting of such notice shall be filed with the board.

(h) Any false statement intentionally made in part of the application, shall be deemed sufficient reason for denial of license and subsequent eligibility.

Section 423. Review and Approval of Applications for Grocery Store License.--(a) All applications for grocery store licenses shall be thoroughly reviewed by the board and by appropriate law enforcement agencies before approval or disapproval.

(b) Reviews shall include thorough review of the required financial statement and any other supporting financial information which shall be required by the board.

(c) The board shall not grant a grocery store license to any applicant who has been convicted of a felony within five years immediately preceding the date of the application.

(d) The board shall not grant a grocery store license to any applicant who receives funds for the financing of any part of the grocery store from any individual who has been convicted of a felony within five years immediately preceding the date of application and that he has not been convicted of violating the liquor laws of any state or of the United States.

(e) In any instance in which a grocery store license applicant or persons with financial interest in the license are under indictment for a felony or under investigation by a legally constituted grand jury, the board shall withhold approval or disapproval of the license until such time as all

1 legal proceedings relating to the felony are resolved.

2 (f) Upon review of the application and upon receipt of the
3 proper fees and bond, and upon being satisfied of the truth of
4 the statements in the application, that the applicant is the
5 only person in any manner pecuniarily interested in the business
6 so asked to be licensed and that no other person will be in any
7 manner pecuniarily interested therein during the continuance of
8 the license, except as hereinafter permitted, and the applicant
9 is a person of good repute, that the premises supplied for meet
10 all the requirements of the law, that the applicant seeks a
11 grocery store license and that the issuance of said license is
12 not prohibited by any of the provisions of this act, the board
13 shall grant and issue to the applicant a grocery store license.

14 Section 424. Physical Limitations.--(a) In the case of any
15 new grocery store license or the transfer of any grocery store
16 license to a new location the board may, in its discretion,
17 grant or refuse such new license or transfer if such place
18 purposed to be licensed is within three hundred feet of any
19 church, hospital, charitable institution, school or public
20 playground.

21 (b) The board may, in its discretion, also grant or refuse
22 such license or transfer if such place purposed to be licensed
23 is within two hundred feet of any other premises which is
24 licensed by the board, or it is such new license or transfer is
25 applied for a place where the principal business is the sale of
26 liquid fuels and oil.

27 (c) The board shall refuse any application for such new
28 license or transfer, if, in the board's opinion, such new
29 license or transfer would be detrimental to the welfare, health,
30 peace and morals of the inhabitants of the neighborhood within a

1 radius of five hundred feet of the place purposed to be
2 licensed.

3 Section 425. License Fees.--In the case of a grocery store
4 license, the annual fee for each license shall be the same as
5 the fee provided for malt beverage importing distributors in
6 section 614-A of the act of April 9, 1929 (P.L.177, No.175),
7 known as "The Administrative Code of 1929."

8 Section 4. Section 461(a) of the act, amended February 21,
9 2002 (P.L.103, No.10), is amended to read:

10 Section 461. Limiting Number of Retail Licenses To Be Issued
11 In Each County.--(a) No additional restaurant, eating place
12 retail dispenser or club licenses shall be issued within a
13 county if the total number of restaurant and eating place retail
14 dispenser licenses is greater than one license for each three
15 thousand inhabitants in the county, except the board may issue
16 licenses to public venues, performing arts facilities,
17 continuing care retirement communities, airport restaurants,
18 grocery stores, municipal golf courses, hotels, privately-owned
19 private golf courses, privately-owned public golf courses,
20 racetracks, automobile racetracks, nonprimary pari-mutuel
21 wagering locations and to any other entity which this act
22 specifically exempts from the limitations provided in this
23 section, and the board may issue a license to a club situated in
24 a borough having a population less than eight thousand
25 inhabitants which is located in a county of the second class A
26 whose application is filed on or before February 28, 2001. In
27 addition, the board may issue an eating place retail dispenser
28 license for on-premises sales only to the owner or operator of a
29 facility having a minimum of a one-half mile asphalt track and
30 having a permanent seating capacity of at least six thousand

1 people used principally for holding automobile races, regardless
2 of the number of restaurant and eating place retail dispenser
3 licenses already issued in that county. When determining the
4 number of restaurant and eating place retail dispenser licenses
5 issued in a county for the purposes of this section, licenses
6 exempted from this limitation and club licenses shall not be
7 considered. Inhabitants of dry municipalities shall be
8 considered when determining the population in a county. Licenses
9 shall not be issued or transferred into municipalities where
10 such licenses are prohibited pursuant to local referendum in
11 accordance with section 472. Licenses approved for
12 intermunicipal transfer may not be transferred from the
13 receiving municipality for a period of five years after the date
14 that the licensed premises are operational in the receiving
15 municipality.

16 * * *

17 Section 5. Section 493(15) of the act is amended and the
18 section is amended by adding a clause to read:

19 Section 493. Unlawful Acts Relative to Liquor, Malt and
20 Brewed Beverages and Licensees.--The term "licensee," when used
21 in this section, shall mean those persons licensed under the
22 provisions of Article IV, unless the context clearly indicates
23 otherwise.

24 It shall be unlawful--

25 * * *

26 (13.1) Grocery Store Licensees Employing Minors. For any
27 grocery store licensee to employ or to permit any minor under
28 the age of eighteen to sell or deliver wine to customers. Minors
29 between the ages of sixteen and eighteen may be employed on the
30 premises provided:

1 (i) that such minors between the ages of sixteen and
2 eighteen are not engaged in the actual selling of wine to
3 customers;

4 (ii) that such minors are employed by a person holding a
5 grocery store license issued by the board; and

6 (iii) that a person twenty-one years of age or older is
7 acting in a supervisory capacity on the premises.

8 * * *

9 (15) Cashing Pay Roll, Public Assistance, Unemployment
10 Compensation or Any Other Relief Checks. For any licensee or his
11 servants, agents or employes to cash pay roll checks or to cash,
12 receive, handle or negotiate in any way Public Assistance,
13 Unemployment Compensation or any other relief checks. This
14 provision shall not apply to grocery store licensees.

15 * * *

16 Section 6. Section 5 of the act of May 13, 1915 (P.L.286,
17 No.177), known as the Child Labor Law, is repealed insofar as it
18 is inconsistent with this act.

19 Section 7. This act shall take effect in one year.