

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1074 Session of  
1987

INTRODUCED BY FREIND, FOX, BOOK, REBER, BUNT, J. TAYLOR,  
DISTLER, HECKLER, E. Z. TAYLOR, D. W. SNYDER, HAGARTY, MERRY,  
REINARD AND S. H. SMITH, APRIL 8, 1987

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 8, 1987

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An  
2 act relating to alcoholic liquors, alcohol and malt and  
3 brewed beverages; amending, revising, consolidating and  
4 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 abolishing the Pennsylvania Liquor Control Board;  
18 establishing the Department of Liquor Control; providing for  
19 a Liquor Hearing Commission; and imposing powers and duties.

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. The definition of "board" in section 102 of the  
23 act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code,  
24 is amended and the section is amended by adding definitions to  
25 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 ["Board" shall mean the Pennsylvania Liquor Control Board.]

5 "Board," or "Pennsylvania Liquor Control Board" or "Liquor  
6 Control Board" shall mean the Department of Liquor Control.

7 \* \* \*

8 "Commission" shall mean the Liquor Hearing Commission.

9 \* \* \*

10 "Department" shall mean the Department of Liquor Control.

11 \* \* \*

12 "Secretary" shall mean the Secretary of Liquor Control.

13 \* \* \*

14 Section 2. Sections 201, 202, 203, 204, 205 and 206 of the  
15 act are repealed.

16 Section 3. The act is amended by adding sections to read:

17 Section 201.1. Department of Liquor Control.--(a) The  
18 Department of Liquor Control is hereby established as an  
19 executive department of the executive branch of the  
20 Commonwealth.

21 (b) The Governor shall, in accordance with the provisions of  
22 section 207.1 of the act of April 9, 1929 (P.L.177, No.175),  
23 known as "The Administrative Code of 1929," appoint a Secretary  
24 of Liquor Control who shall serve as a cabinet officer at his  
25 pleasure.

26 (c) Except for the powers and duties conferred upon the  
27 commission, the secretary shall, either personally or by deputy,  
28 or by duly authorized agent or employe of the department,  
29 exercise the powers and perform the duties by law heretofore  
30 vested in and imposed upon the board and shall exercise any

other powers and perform any other duties vested in and imposed upon the department.

(d) The salary of the Secretary of Liquor Control shall be sixty-five thousand dollars (\$65,000) annually.

(e) Except as otherwise expressly provided by law, the department shall be subject to all of the provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," which apply generally to administrative departments.

(f) The department shall be deemed an executive agency for purposes of the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act."

Section 202.1. Liquor Hearing Commission.--(a) The Liquor Hearing Commission shall consist of three persons, who shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. The Governor shall designate the chairman of the commission. The commissioners shall devote full-time to the work of the commission.

(b) The members of the commission shall serve for a term of six years or until their respective successors are duly appointed and qualified, but commission members may not hold over for more than six months beyond the expiration of their term of office unless such members are again appointed and qualified in the manner prescribed by the act. Of the persons initially appointed, the chairman shall serve for a term of six years and the other two members for terms of four years and two years respectively.

(c) The commission is hereby placed and made a departmental administrative commission in the department and, except as

1 otherwise provided by law, shall be subject to all the  
2 provisions of the act of April 9, 1929 (P.L.177, No.175), known  
3 as "The Administrative Code of 1929," which apply generally to  
4 departmental administrative commissions.

5 (d) The commission, with the approval of the Governor, shall  
6 appoint a secretary to the commission who shall receive such  
7 salary as the commission, with the approval of the Governor,  
8 shall determine.

9 (e) In addition to any powers and duties conferred by this  
10 amendatory act, the commission shall have the power and its duty  
11 shall be to hold hearings and issue adjudications heretofore  
12 possessed by the Liquor Control Board in regard to the  
13 suspension and revocation of all licenses and permits authorized  
14 to be issued under this act and the regulations of the  
15 department and the imposition of all fines on licensees and  
16 permittees under this act. Such hearing shall be before the  
17 commission or a department hearing examiner designated by the  
18 commission for this purpose. The hearing examiner shall  
19 thereafter report to the commission upon such hearing. The  
20 commission shall thereupon adjudicate the matter.

21 (f) The commission may employ, with the concurrence of the  
22 secretary, such other personnel, as are necessary in the  
23 exercise of its functions. Nothing in this section shall  
24 authorize the commission to appoint hearing examiners.

25 Section 202.2. Appointment of Hearing Examiners.--All  
26 hearing examiners shall be appointed by the Governor. Every  
27 person appointed to the position of hearing examiner after the  
28 effective date of this section shall be a person qualified and  
29 authorized to practice law in the Commonwealth. Any hearing  
30 examiner holding the position or appointed to the position of

1 hearing examiner on and after the effective date of this act  
2 shall only be removed as a hearing examiner for cause or for  
3 reasons of economy.

4 Section 4. Section 207(d) and (e) of the act, amended  
5 January 13, 1966 (1965 P.L.1301, No.518), are amended and the  
6 section is amended by adding a subsection to read:

7 Section 207. General Powers of Board.--Under this act, the  
8 board shall have the power and its duty shall be:

9 \* \* \*

10 (d) To grant[, issue, suspend and revoke] and issue all  
11 licenses and permits authorized to be issued under this act and  
12 the regulations of the board and impose fines on licensees  
13 licensed under this act.

14 (e) Through the Department of [Property and Supplies]  
15 General Services as agent, to lease and furnish and equip such  
16 buildings, rooms and other accommodations as shall be required  
17 for the operation of this act.

18 \* \* \*

19 (k) To investigate violations and, if the investigation  
20 produces sufficient evidence of a violation that falls within  
21 the jurisdiction of the commission, to bring an action before  
22 the commission.

23 Section 5. Section 210 of the act is amended to read:

24 Section 210. Restrictions on Members of the [Board]  
25 Department and Employees of Commonwealth.--(a) [A member or  
26 employe] The Secretary of Liquor Control and the officers and  
27 employes of the [board] department, including the commission,  
28 shall not be directly or indirectly interested or engaged in any  
29 other business or undertaking dealing in liquor, alcohol, or  
30 malt or brewed beverages, whether as owner, part owner, partner,

1 member of syndicate, shareholder, agent or employe, and whether  
2 for his own benefit or in a fiduciary capacity for some other  
3 person.

4 (b) [No member or employe of the board nor] The Secretary of  
5 Liquor Control and the officers and employes of the department,  
6 including the commission, and any employe of the Commonwealth  
7 shall not solicit or receive, directly or indirectly, any  
8 commission, remuneration or gift whatsoever, from any person  
9 having sold, selling or offering liquor or alcohol for sale to  
10 the [board] department for use in Pennsylvania Liquor Stores.

11 Section 6. Section 404 of the act, amended September 2, 1971  
12 (P.L.429, No.103), is amended to read:

13 Section 404. Issuance of Hotel, Restaurant and Club Liquor  
14 Licenses.--(a) Upon receipt of the application, the proper fees  
15 and bond, and upon being satisfied of the truth of the  
16 statements in the application that the applicant is the only  
17 person in any manner pecuniarily interested in the business so  
18 asked to be licensed and that no other person will be in any  
19 manner pecuniarily interested therein during the continuance of  
20 the license, except as hereinafter permitted, and that the  
21 applicant is a person of good repute, that the premises applied  
22 for meet all the requirements of this act and the regulations of  
23 the board, that the applicant seeks a license for a hotel,  
24 restaurant or club, as defined in this act, and that the  
25 issuance of such license is not prohibited by any of the  
26 provisions of this act, the board shall, in the case of a hotel  
27 or restaurant, grant and issue to the applicant a liquor  
28 license, and in the case of a club may, in its discretion, issue  
29 or refuse a license: Provided, however, That in the case of any  
30 new license or the transfer of any license to a new location the

1 board may, in its discretion, grant or refuse such new license  
2 or transfer if such place proposed to be licensed is within  
3 three hundred feet of any church, hospital, charitable  
4 institution, school, or public playground, or if such new  
5 license or transfer is applied for a place which is within two  
6 hundred feet of any other premises which is licensed by the  
7 board, or if such new license or transfer is applied for a place  
8 where the principal business is the sale of liquid fuels and  
9 oil: And provided further, That the board shall refuse any  
10 application for a new license or the transfer of any license to  
11 a new location if, in the board's opinion, such new license or  
12 transfer would be detrimental to the welfare, health, peace and  
13 morals of the inhabitants of the neighborhood within a radius of  
14 five hundred feet of the place proposed to be licensed: And  
15 provided further, That the board shall not issue new licenses in  
16 any license district more than twice each license year,  
17 effective from specific dates fixed by the board, and new  
18 licenses shall not be granted, except for hotels as defined in  
19 this act, unless the application therefor shall have been filed  
20 at least thirty days before the effective date of the license:  
21 And provided further, That nothing herein contained shall  
22 prohibit the board from issuing a new license for the balance of  
23 any unexpired term in any license district to any applicant in  
24 such district, who shall have become eligible to hold such  
25 license as the result of legislative enactment, when such  
26 enactment shall have taken place during the license term of that  
27 district for which application is made or within the thirty days  
28 immediately preceding such term, nor shall anything herein  
29 contained prohibit the board from issuing at any time a new  
30 license for an airport restaurant, or municipal golf course, as

1 defined in section 461 of this act, for the balance of the  
2 unexpired license term in any license district: And provided  
3 further, That the board shall have the discretion to refuse a  
4 license to any person or to any corporation, partnership or  
5 association if such person, or any officer or director of such  
6 corporation, or any member or partner of such partnership or  
7 association shall have been convicted or found guilty of a  
8 felony within a period of five years immediately preceding the  
9 date of application for the said license.

10 (b) No application for a new license or the transfer of an  
11 existing license to a new location shall be approved unless  
12 satisfactory evidence is received that the applicant has caused  
13 notice to be published once a week for three consecutive weeks  
14 in a newspaper of general circulation as defined by 45 Pa.C.S. §  
15 101 (relating to definitions), published and circulated in the  
16 affected municipality or published in a newspaper of general  
17 circulation which has a bona fide paid circulation in the  
18 municipality equal to or greater than any newspaper published  
19 therein. In addition, such notice shall be published once in the  
20 legal journal, if any, designated by the court for the  
21 publication of legal notices. The legal journal publication and  
22 the first newspaper advertised publication shall be published at  
23 least thirty days prior to and within three months immediately  
24 preceding the filing of the application. In addition, such  
25 notice of intention to apply shall be posted prominently on the  
26 premises for which licensure is sought at least ten days but not  
27 more than thirty days preceding the filing of the application.  
28 The notice shall be in the form and contain the information  
29 prescribed by the department.

30 Section 7. Section 464 of the act, repealed in part June 3,

1 1971 (P.L.118, No.6), is amended to read:

2 Section 464. Hearings Upon Refusal of Licenses, Renewals or  
3 Transfers; Appeals.--(a) The board may of its own motion, and  
4 shall upon the written request of any applicant for club, hotel  
5 or restaurant liquor license, or any applicant for any malt or  
6 brewed beverage license other than a public service license, or  
7 for renewal or transfer thereof, whose application for such  
8 license, renewal or transfer has been refused, fix a time and  
9 place for hearing of such application for license or for renewal  
10 or transfer thereof, notice of which hearing shall be mailed to  
11 the applicant at the address given in his application. Such  
12 hearing shall be before the board, a member thereof, or an  
13 examiner designated by the board. At such hearing, the board  
14 shall present its reasons for its refusal or withholding of  
15 license, renewal or transfer thereof. The applicant may appear  
16 in person or by counsel, may cross-examine the witnesses for the  
17 board and may present evidence which shall likewise be subject  
18 to cross-examination by the board. Such hearing shall be  
19 stenographically recorded. The examiner shall thereafter report  
20 to the board upon such hearing. The board shall thereupon grant  
21 or refuse the license, renewal or transfer thereof. In  
22 considering the renewal of a license, the board shall not refuse  
23 any such renewal on the basis of the propriety of the original  
24 issuance or any prior renewal of such license. If the board  
25 shall refuse such license, renewal or transfer following such  
26 hearing, notice in writing of such refusal shall be mailed to  
27 the applicant at the address given in his application. In all  
28 such cases, the board shall file of record at least a brief  
29 statement in the form of an opinion of the reasons for the  
30 ruling or order and furnish a copy thereof to the applicant. Any

1 applicant who has appeared before the board or any agent thereof  
2 at any hearing, as above provided, who is aggrieved by the  
3 refusal of the board to issue any such license or to renew or  
4 transfer any such license may appeal, or any church, hospital,  
5 charitable institution, school or public playground or parents  
6 or guardians of minors under twenty-one years of age attending a  
7 school located within three hundred feet of the premises applied  
8 for, aggrieved by the action of the board in granting the  
9 issuance of any such license or the transfer of any such  
10 license, may take an appeal limited to the question of such  
11 grievance, within twenty days from date of refusal or grant, to  
12 the court of quarter sessions of the county in which the  
13 premises applied for is located or the county court of Allegheny  
14 County. Such appeal shall be upon petition of the aggrieved  
15 party, who shall serve a copy thereof upon the board, whereupon  
16 a hearing shall be held upon the petition by the court upon ten  
17 days' notice to the board, which shall be represented in the  
18 proceeding by the Department of Justice. The said appeal shall  
19 act as a supersedeas unless upon sufficient cause shown the  
20 court shall determine otherwise. The court shall hear the  
21 application de novo on questions of fact, administrative  
22 discretion and such other matters as are involved, at such time  
23 as it shall fix, of which notice shall be given to the board.  
24 The court shall either sustain or over-rule the action of the  
25 board and either order or deny the issuance of a new license or  
26 the renewal or transfer of the license to the applicant.

27 The jurisdiction of the county court of Allegheny County  
28 conferred hereby shall be exclusive within the territorial  
29 limits of its jurisdiction.

30 (b) Whenever one or more inhabitants of a neighborhood

1 within a radius of five hundred feet of the place proposed to be  
2 licensed make a request, in writing, that the department conduct  
3 a public hearing on whether the issuance of a new license or the  
4 transfer of any license to a new location would be detrimental  
5 to the welfare, health, peace and morals of the neighborhood,  
6 the department shall conduct a public hearing thereon within the  
7 county where the place proposed to be licensed is situated.  
8 Whenever a school or the parents or guardians of minors under  
9 twenty-one years of age attending a school situated within three  
10 hundred feet of the place proposed to be licensed make a  
11 request, in writing, that the department conduct a public  
12 hearing on whether the issuance of a new license or transfer of  
13 any license to a new location would be detrimental to the  
14 welfare, health, peace and morals of the minors attending the  
15 school, the department shall conduct a public hearing thereon  
16 within the county where the place proposed to be licensed is  
17 situated. Such public hearing shall be in addition to any other  
18 hearing the department may conduct on the application.

19       Section 8. (a) All personnel, allocations, appropriations,  
20 equipment, files, records, contracts, agreements, obligations  
21 and other materials which are used, employed or expended in  
22 connection with the powers, duties or functions of the  
23 Pennsylvania Liquor Control Board are hereby transferred to the  
24 Department of Liquor Control established by this act with the  
25 same force and effect as if the allocations and appropriations  
26 had been made to and said items had been the personnel and  
27 property of the Department of Liquor Control in the first  
28 instance and as if the contracts, agreements and obligations had  
29 been incurred or entered into by the Department of Liquor  
30 Control.

1 (b) All present employees of the Pennsylvania Liquor Control  
2 Board are hereby transferred to the Department of Liquor Control  
3 established by this act. All such employees shall continue in  
4 their employment with the same pay scales, salaries, wages,  
5 seniority benefits, pension rights and other incidents of  
6 employment, including, but not limited to, civil service status  
7 and collective bargaining status, as if this act had not been  
8 enacted.

9 (c) Except where the context indicates that the reference is  
10 intended as applying to the Liquor Hearing Commission, all  
11 references in statutes to the Pennsylvania Liquor Control Board  
12 abolished by section 2 of this act (repealing sections 201  
13 through 206) shall be deemed to be references to the Department  
14 of Liquor Control established by this act.

15 Section 9. All orders, licenses, regulations, decisions and  
16 other actions of the Pennsylvania Liquor Control Board shall  
17 remain in full force and effect until modified, repealed,  
18 suspended, superseded or otherwise changed by duly authorized  
19 action.

20 Section 10. (a) All powers granted by this act to the  
21 Department of Liquor Control shall be exercised by the  
22 Pennsylvania Liquor Control Board until the Secretary of Liquor  
23 Control has been appointed by the Governor and confirmed by the  
24 Senate.

25 (b) All powers granted by this act to the Liquor Hearing  
26 Commission shall be exercised by the Pennsylvania Liquor Control  
27 Board until the Governor has issued his proclamation stating  
28 that the Liquor Hearing Commission is authorized and ready to  
29 perform the powers, duties and responsibilities prescribed by  
30 this act.

1       Section 11. Each rule, regulation or fee of the Pennsylvania  
2 Liquor Control Board in effect on the effective date of this act  
3 shall remain in effect after such date until repealed or  
4 modified by the Department of Liquor Control.

5       Section 12. The Department of Liquor Control shall be funded  
6 to the same extent as is the Pennsylvania Liquor Control Board  
7 by and from The State Stores Fund.

8       Section 13. (a) Section 2 of this act shall take effect on  
9 the effective date of this act except to the extent necessary to  
10 carry out the provisions of section 10 of this act.

11       (b) The Pennsylvania Liquor Control Board is continued in  
12 existence to the extent necessary to carry out the provisions of  
13 section 10 of this act.

14       Section 14. All acts and parts of acts are repealed insofar  
15 as they are inconsistent with this act.

16       Section 15. This act shall be retroactive to December 31,  
17 1986.

18       Section 16. This act shall take effect immediately.