

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 674 Session of
2007INTRODUCED BY LOGAN, RAFFERTY, FONTANA, FERLO, MUSTO,
WONDERLING, EARLL AND C. WILLIAMS, MARCH 23, 2007

SENATOR RAFFERTY, LAW AND JUSTICE, AS AMENDED, JUNE 6, 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 further providing for the definition of "case" and, for sale <—
18 of malt or brewed beverages by liquor licensees AND FOR <—
19 RETAIL DISPENSERS' RESTRICTIONS ON PURCHASES AND SALES; AND
20 FURTHER PROHIBITING INTERLOCKING BUSINESS AND UNLAWFUL ACTS
21 RELATIVE TO LIQUOR, MALT AND BREWED BEVERAGES AND LICENSEES.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. The definition of "case" in section 102 of the
25 act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code,
26 reenacted and amended June 29, 1987 (P.L.32, No.14) and amended
27 July 7, 2006 (P.L.584, No.84), is amended to read:

1 Section 102. Definitions.--The following words or phrases,
2 unless the context clearly indicates otherwise, shall have the
3 meanings ascribed to them in this section:

4 * * *

5 "Case" shall mean a package prepared by the manufacturer for
6 sale or distribution of [twelve] SIX or more original containers <—
7 totaling [two hundred sixty-four] ~~one hundred forty four~~ SIXTY- <—
8 SIX or more fluid ounces of malt or brewed beverages excepting
9 those packages containing twenty-four or more original
10 containers each holding seven fluid ounces or more.

11 * * *

12 Section 2. Section 407(a) of the act, amended July 7, 2006
13 (P.L.584, No.84), is amended to read:

14 Section 407. Sale of Malt or Brewed Beverages by Liquor
15 Licensees.--(a) Every liquor license issued to a hotel,
16 restaurant, club, or a railroad, pullman or steamship company
17 under this subdivision (A) for the sale of liquor shall
18 authorize the licensee to sell malt or brewed beverages at the
19 same places but subject to the same restrictions and penalties
20 as apply to sales of liquor, except that licensees other than
21 clubs may sell malt or brewed beverages for consumption off the
22 premises where sold in quantities of not more than [one hundred
23 ninety-two] two hundred sixteen fluid ounces in a single sale to
24 one person. No licensee under this subdivision (A) shall at the
25 same time be the holder of any other class of license, except a
26 retail dispenser's license authorizing the sale of malt or
27 brewed beverages only.

28 * * *

29 SECTION 3. SECTION 442(A) OF THE ACT, AMENDED JULY 7, 2006 <—
30 (P.L.584, NO.84) AND NOVEMBER 29, 2006 (P.L.1421, NO.155), IS

1 AMENDED TO READ:

2 SECTION 442. RETAIL DISPENSERS' RESTRICTIONS ON PURCHASES
3 AND SALES.--(A) (1) NO RETAIL DISPENSER SHALL PURCHASE OR
4 RECEIVE ANY MALT OR BREWED BEVERAGES EXCEPT IN ORIGINAL
5 CONTAINERS AS PREPARED FOR THE MARKET BY THE MANUFACTURER AT THE
6 PLACE OF MANUFACTURE. THE RETAIL DISPENSER MAY THEREAFTER BREAK
7 THE BULK UPON THE LICENSED PREMISES AND SELL OR DISPENSE THE
8 SAME FOR CONSUMPTION ON OR OFF THE PREMISES SO LICENSED:
9 PROVIDED, HOWEVER, THAT NO RETAIL DISPENSER MAY SELL MALT OR
10 BREWED BEVERAGES FOR CONSUMPTION OFF THE PREMISES IN QUANTITIES
11 IN EXCESS OF [ONE HUNDRED NINETY-TWO] TWO HUNDRED SIXTEEN FLUID
12 OUNCES: PROVIDED, FURTHER, THAT NO CLUB LICENSEE MAY SELL ANY
13 MALT OR BREWED BEVERAGES FOR CONSUMPTION OFF THE PREMISES WHERE
14 SOLD OR TO PERSONS NOT MEMBERS OF THE CLUB.

15 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR ANY
16 EXISTING PERMIT AUTHORIZING THE SALE OF MALT OR BREWED BEVERAGES
17 FOR CONSUMPTION OFF THE PREMISES, A RETAIL DISPENSER LICENSEE
18 LOCATED IN A CITY OF THE FIRST CLASS WHO IS OTHERWISE PERMITTED
19 TO SELL MALT OR BREWED BEVERAGES FOR CONSUMPTION OFF THE
20 PREMISES MAY NOT DO SO AFTER OCTOBER 31, 2007, UNLESS IT
21 ACQUIRES A PERMIT FROM THE BOARD.

22 (3) THE APPLICATION FOR A PERMIT TO SELL MALT OR BREWED
23 BEVERAGES FOR CONSUMPTION OFF THE PREMISES SHALL BE ON FORMS
24 DESIGNATED BY THE BOARD AND CONTAIN SUCH INFORMATION AS THE
25 BOARD MAY REQUIRE. THE APPLICATION AND RENEWAL FEE SHALL BE AS
26 PRESCRIBED IN SECTION 614-A(28) OF THE ACT OF APRIL 9, 1929
27 (P.L.177, NO.175), KNOWN AS "THE ADMINISTRATIVE CODE OF 1929."
28 HOWEVER, NO APPLICANT WHO CURRENTLY HAS A PERMIT SHALL BE
29 REQUIRED TO PAY ANY ADDITIONAL FEES UNDER SECTION 614-A(28) OF
30 "THE ADMINISTRATIVE CODE OF 1929" IN ORDER TO CONTINUE SELLING

1 MALT OR BREWED BEVERAGES FOR CONSUMPTION OFF THE PREMISES AT ITS
2 CURRENTLY LICENSED LOCATION FOR THE LICENSING TERM BEGINNING
3 NOVEMBER 1, 2007, AND ENDING OCTOBER 31, 2008.

4 (4) THE APPLICATION FOR A PERMIT TO SELL MALT OR BREWED
5 BEVERAGES FOR CONSUMPTION OFF THE PREMISES MUST BE ACCOMPANIED
6 BY A COPY OF THE APPROVAL OF SUCH REQUEST BY THE HEARING BOARD
7 AUTHORIZED BY THIS SECTION.

8 (5) A CITY OF THE FIRST CLASS SHALL CREATE A HEARING BOARD
9 WITHIN ITS DEPARTMENT OF LICENSES AND INSPECTIONS TO HEAR
10 REQUESTS FROM LICENSEES WHO ARE SEEKING A PERMIT FROM THE
11 HEARING BOARD AUTHORIZING THE LICENSEE TO SELL MALT OR BREWED
12 BEVERAGES FOR CONSUMPTION OFF THE PREMISES. EACH HEARING BOARD
13 SHALL CONSIST OF THREE PERSONS APPOINTED BY THE MAYOR OF THE
14 CITY OF THE FIRST CLASS, WHO ARE SUBJECT TO APPROVAL BY THE CITY
15 COUNCIL OF THE CITY OF THE FIRST CLASS. EACH PERSON SO APPOINTED
16 SHALL SERVE AT THE PLEASURE OF THE APPOINTING AUTHORITY. THE
17 HEARING BOARD MAY, IN ITS DISCRETION, HOLD HEARINGS TO ADDUCE
18 TESTIMONY REGARDING A REQUEST. THE HEARING BOARD MUST RENDER A
19 DECISION WITHIN NINETY DAYS OF RECEIPT OF A REQUEST FOR APPROVAL
20 OF A PERMIT TO SELL MALT OR BREWED BEVERAGES FOR CONSUMPTION OFF
21 THE PREMISES. THE HEARING BOARD MUST APPROVE THE REQUEST UNLESS
22 IT FINDS THAT DOING SO WOULD ADVERSELY AFFECT THE WELFARE,
23 HEALTH, PEACE AND MORALS OF THE CITY OR ITS RESIDENTS. A
24 DECISION BY THE HEARING BOARD TO DENY A REQUEST MAY BE APPEALED
25 TO THE COURT OF COMMON PLEAS IN THE COUNTY IN WHICH THE CITY IS
26 LOCATED. THE FAILURE TO RENDER A DECISION BY THE HEARING BOARD
27 WITHIN THE REQUIRED TIME PERIOD SHALL BE DEEMED APPROVAL OF THE
28 PERMIT.

29 (6) UPON BEING SATISFIED THAT THE APPLICANT HAS FULFILLED
30 ALL THE REQUIREMENTS OF THIS ACT AND THE BOARD'S REGULATIONS,

1 THE BOARD SHALL APPROVE THE APPLICATION. SUCH PERMITS SHALL
2 EXPIRE UPON THE TRANSFER OF THE LICENSE TO A NEW ENTITY OR TO A
3 NEW LOCATION, OR BOTH; OTHERWISE, SUCH PERMITS SHALL EXPIRE AT
4 THE SAME TIME AS THE EXPIRATION OF THE UNDERLYING LICENSE.

5 SECTION 4. SECTION 443(F) OF THE ACT, AMENDED JUNE 18, 1998
6 (P.L.664, NO.86), IS AMENDED TO READ:

7 SECTION 443. INTERLOCKING BUSINESS PROHIBITED.--* * *

8 (F) [NO] (1) EXCEPT AS OTHERWISE PROVIDED UNDER PARAGRAPH
9 (2), NO DISTRIBUTOR, IMPORTING DISTRIBUTOR OR RETAIL DISPENSER
10 SHALL IN ANYWISE RECEIVE, EITHER DIRECTLY OR INDIRECTLY, ANY
11 CREDIT, LOAN, MONEYS OR THE EQUIVALENT THEREOF FROM ANY OTHER
12 LICENSEE, OR FROM ANY OFFICER, DIRECTOR OR FIRM MEMBER OF ANY
13 OTHER LICENSEE, OR FROM OR THROUGH A SUBSIDIARY OR AFFILIATE OF
14 ANOTHER LICENSEE, OR FROM ANY FIRM, ASSOCIATION OR CORPORATION,
15 EXCEPT BANKING INSTITUTIONS, IN WHICH ANOTHER LICENSEE OR ANY
16 OFFICER, DIRECTOR OR FIRM MEMBER OF ANOTHER LICENSEE HAS A
17 SUBSTANTIAL INTEREST OR EXERCISES A CONTROL OF ITS BUSINESS
18 POLICY, FOR EQUIPPING, FITTING OUT, PAYMENT OF LICENSE FEE,
19 MAINTAINING AND CONDUCTING, EITHER IN WHOLE OR IN PART, AN
20 ESTABLISHMENT OR BUSINESS OPERATED UNDER A DISTRIBUTOR'S,
21 IMPORTING DISTRIBUTOR'S OR RETAIL DISPENSER'S LICENSE, EXCEPTING
22 ONLY THE USUAL AND CUSTOMARY CREDITS ALLOWED FOR THE RETURN OF
23 ORIGINAL CONTAINERS IN WHICH MALT OR BREWED BEVERAGES WERE
24 PACKAGED FOR THE MARKET BY THE MANUFACTURER AT THE PLACE OF
25 MANUFACTURE: PROVIDED, HOWEVER, THAT A HOLDER OF A
26 MANUFACTURER'S LICENSE UNDER SECTION 431(A) WHO IS ELIGIBLE TO
27 OPERATE A BREWERY PUB UNDER SECTION 446(2) OR A LIMITED WINERY
28 AS PROVIDED FOR UNDER SECTION 505.2 MAY ALSO HOLD AND OPERATE
29 UNDER A HOTEL LIQUOR LICENSE, A RESTAURANT LIQUOR LICENSE OR A
30 MALT AND BREWED BEVERAGES RETAIL LICENSE ON THE MANUFACTURER'S

OR LIMITED WINERY'S LICENSED PREMISES.

(2) MALT BEVERAGE MANUFACTURERS AND IMPORTING DISTRIBUTORS MAY, UPON CONSENT OF A LICENSEE, ENGAGE IN REGULAR ROTATION OF THEIR OWN MALT BEVERAGES AS NECESSARY TO ENSURE THE FRESHNESS OF SUCH PRODUCTS DUE TO THEIR LIMITED SHELF LIFE, INCLUDING MOVING THEIR OWN MALT BEVERAGES FROM STORAGE AREAS TO STORE SHELVES, DISPLAY AREAS AND COOLERS WHEN NECESSARY TO ENSURE FRESHNESS.

THE HOTEL LIQUOR LICENSE OR RESTAURANT LIQUOR LICENSE OR THE MALT AND BREWED BEVERAGES RETAIL LICENSE SHALL BE ACQUIRED BY THE MANUFACTURER OR LIMITED WINERY SUBJECT TO SECTION 461 AND SHALL SATISFY ALL REQUIREMENTS FOR EACH RESPECTIVE LICENSE.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN IMPORTING DISTRIBUTOR FROM RECEIVING PAYMENT FROM AN OUT OF STATE MANUFACTURER FOR ENGAGING IN A TRANSACTION OR PERFORMING SERVICES AUTHORIZED BY SECTION 431(B) OR 444(A.1).

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SECTION 5. SECTION 493(2) OF THE ACT, AMENDED JULY 6, 2005 (P.L.135, NO.39), IS AMENDED TO READ:

SECTION 493. UNLAWFUL ACTS RELATIVE TO LIQUOR, MALT AND BREWED BEVERAGES AND LICENSEES.--THE TERM "LICENSEE," WHEN USED IN THIS SECTION, SHALL MEAN THOSE PERSONS LICENSED UNDER THE PROVISIONS OF ARTICLE IV, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE.

IT SHALL BE UNLAWFUL--

* * *

(2) PURCHASE OR SALE OF LIQUOR OR MALT OR BREWED BEVERAGES ON CREDIT; IMPORTING DISTRIBUTORS OR DISTRIBUTORS ACCEPTING CASH. FOR ANY LICENSEE, HIS AGENT, SERVANT OR EMPLOYE, TO SELL OR OFFER TO SELL OR PURCHASE OR RECEIVE ANY LIQUOR OR MALT OR BREWED BEVERAGES EXCEPT FOR CASH, EXCEPTING CREDIT EXTENDED BY A

1 HOTEL OR CLUB TO A BONA FIDE GUEST OR MEMBER, OR BY RAILROAD OR
2 PULLMAN COMPANIES IN DINING, CLUB OR BUFFET CARS TO PASSENGERS,
3 FOR CONSUMPTION WHILE ENROUTE, HOLDING AUTHORIZED CREDIT CARDS
4 ISSUED BY RAILROAD OR RAILROAD CREDIT BUREAUS OR BY HOTEL,
5 RESTAURANT, RETAIL DISPENSER EATING PLACE, CLUB AND PUBLIC
6 SERVICE LICENSEES, IMPORTING DISTRIBUTORS OR DISTRIBUTORS TO
7 CUSTOMERS [NOT POSSESSING A LICENSE UNDER THIS ARTICLE AND]
8 HOLDING CREDIT CARDS ISSUED IN ACCORDANCE WITH REGULATIONS OF
9 THE BOARD OR CREDIT CARDS ISSUED BY BANKING INSTITUTIONS SUBJECT
10 TO STATE OR FEDERAL REGULATION: PROVIDED FURTHER, THAT NOTHING
11 HEREIN CONTAINED SHALL BE CONSTRUED TO PROHIBIT THE USE OF
12 CHECKS OR DRAFTS DRAWN ON A BANK, BANKING INSTITUTION, TRUST
13 COMPANY OR SIMILAR DEPOSITORY, ORGANIZED AND EXISTING UNDER THE
14 LAWS OF THE UNITED STATES OF AMERICA OR THE LAWS OF ANY STATE,
15 TERRITORY OR POSSESSION THEREOF, IN PAYMENT FOR ANY LIQUOR OR
16 MALT OR BREWED BEVERAGES IF THE PURCHASER IS THE PAYOR OF THE
17 CHECK OR DRAFT AND THE LICENSEE IS THE PAYEE: PROVIDED FURTHER,
18 THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO THE
19 CONTRARY, IT SHALL BE UNLAWFUL FOR AN IMPORTING DISTRIBUTOR OR
20 DISTRIBUTOR TO ACCEPT CASH FOR PAYMENT OF ANY MALT OR BREWED
21 BEVERAGES FROM ANYONE POSSESSING A LICENSE ISSUED UNDER THIS
22 ARTICLE, EXCEPT IT SHALL BE PERMISSIBLE FOR THE IMPORTING
23 DISTRIBUTOR OR DISTRIBUTOR TO ACCEPT MONEY ORDERS OR CASHIERS'
24 CHECKS FOR PAYMENT OF ANY MALT OR BREWED BEVERAGES IN ADDITION
25 TO ANY OTHER TYPE OF PAYMENT AUTHORIZED BY THE BOARD FROM ANYONE
26 POSSESSING A LICENSE UNDER THIS ARTICLE. NO RIGHT OF ACTION
27 SHALL EXIST TO COLLECT ANY CLAIM FOR CREDIT EXTENDED CONTRARY TO
28 THE PROVISIONS OF THIS CLAUSE. NOTHING HEREIN CONTAINED SHALL
29 PROHIBIT A LICENSEE FROM CREDITING TO A PURCHASER THE ACTUAL
30 PRICE CHARGED FOR ORIGINAL CONTAINERS RETURNED BY THE ORIGINAL

1 PURCHASER AS A CREDIT ON ANY SALE, OR FROM REFUNDING TO ANY
2 PURCHASER THE AMOUNT PAID BY SUCH PURCHASER FOR SUCH CONTAINERS
3 OR AS A DEPOSIT ON CONTAINERS WHEN TITLE IS RETAINED BY THE
4 VENDOR, IF SUCH ORIGINAL CONTAINERS HAVE BEEN RETURNED TO THE
5 LICENSEE. NOTHING HEREIN CONTAINED SHALL PROHIBIT A MANUFACTURER
6 FROM EXTENDING USUAL AND CUSTOMARY CREDIT FOR LIQUOR OR MALT OR
7 BREWED BEVERAGES SOLD TO CUSTOMERS OR PURCHASERS WHO LIVE OR
8 MAINTAIN PLACES OF BUSINESS OUTSIDE OF THE COMMONWEALTH OF
9 PENNSYLVANIA, WHEN THE LIQUOR OR MALT OR BREWED BEVERAGES SO
10 SOLD ARE ACTUALLY TRANSPORTED AND DELIVERED TO POINTS OUTSIDE OF
11 THE COMMONWEALTH: PROVIDED, HOWEVER, THAT AS TO ALL TRANSACTIONS
12 AFFECTING MALT OR BREWED BEVERAGES TO BE RESOLD OR CONSUMED
13 WITHIN THIS COMMONWEALTH, EVERY LICENSEE SHALL PAY AND SHALL
14 REQUIRE CASH DEPOSITS ON ALL RETURNABLE ORIGINAL CONTAINERS AND
15 ALL SUCH CASH DEPOSITS SHALL BE REFUNDED UPON RETURN OF THE
16 ORIGINAL CONTAINERS.

17 * * *

18 Section 3 6. This act shall take effect in 60 days.

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