

LIQUOR CODE - OMNIBUS AMENDMENTS
Act of Dec. 8, 2004, P.L. 1810, No. 239
Session of 2004
No. 2004-239

Cl. 47

HB 2105

AN ACT

Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as reenacted, "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," adding definitions; further defining "public venue"; further providing for general powers of the Pennsylvania Liquor Control Board, for when sales may be made by Pennsylvania Liquor Stores, for continuing care retirement community retail licenses, for repackaging by manufacturers, for renewal of licenses, for privately owned golf courses located in more than one county; providing for a point system for certain licensees, for unlawful acts relative to liquor, malt and brewed beverages and licensees and for limited wineries; and providing for distilleries.

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

Section 1. The definition of "public venue" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and amended June 29, 1987 (P.L.32, No.14) and amended July 17, 2003 (P.L.63, No.15), is amended and the section is amended by adding definitions to read:

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

* * *

"Equine center" shall mean a facility of at least two hundred fifty acres in size which hosts equestrian shows and which has a primary building with permanent seating for at least six thousand (6,000) people.

* * *

"Holiday" shall mean the first day of January, commonly known as New Year's Day; the third Monday of January, known as Dr. Martin Luther King, Jr., Day; the third Monday in February, known as Presidents' Day; the last Monday in May, known as Memorial Day; the fourth day of July, known as Independence Day; the first Monday of September, known as Labor Day; the fourth Thursday in November, known as Thanksgiving Day; and the twenty-fifth day of December, known as Christmas Day.

* * *

"Public venue" shall mean a stadium, arena, convention center, museum, amphitheater or similar structure. If the public venue is a cruise terminal owned or leased by a port authority created under the act of June 12, 1931 (P.L.575, No.200), entitled "An act providing for joint action by Pennsylvania and New Jersey in the development of the ports on the lower Delaware River, and the improvement of the facilities for transportation across the river; authorizing the Governor, for these purposes, to enter into an agreement with New Jersey; creating The Delaware River Joint Commission and specifying the powers and duties thereof, including the power to finance projects by the issuance of revenue bonds; transferring to the new commission all the powers of the Delaware River Bridge Joint Commission; and making an appropriation," it shall have no permanent seating requirement. If the public venue is an open-air amphitheater owned by a port authority created under the act of December 6, 1972 (P.L.1392, No.298), known as the "Third Class City Port Authority Act," it shall have no permanent seating requirement. If the public venue is owned by a political subdivision, a municipal authority, the Commonwealth, an authority created under the act of July 29, 1953 (P.L.1034, No.270), known as the "Public Auditorium Authorities Law," an authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," an art museum established under the authority of the act of April 6, 1791 (3 Sm.L.20, No.1536), entitled "An act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law," or an authority created under Article XXIII (n) or (o) of the act of August 9, 1955 (P.L.323, No.130), known as "The County Code," it shall have permanent seating for at least one thousand (1,000) people; otherwise, it shall have permanent seating for at least three thousand (3,000) people. The term shall also mean any regional history center, multipurpose cultural and science facility [or], museum **or convention or trade show center**, regardless of owner and seating capacity, that has a floor area of at least sixty thousand (60,000) square feet in one building. The term shall also mean a convention or conference center owned by a city of the third class, regardless of seating capacity, that has a floor area of at least fifteen thousand (15,000) square feet in one building.

* * *

"Wine" shall mean liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less. The term "wine" shall not include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.

* * *

Section 2. Section 207(a) of the act, amended December 30, 2003 (P.L.423, No.59), is amended to read:

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

(a) To buy, import or have in its possession for sale and sell liquor, alcohol, corkscrews, wine and liquor accessories, trade publications, **wine- or liquor-scented candles** and wine glasses in the manner set forth in this act: Provided, however, That all purchases shall be made subject to the approval of the State Treasurer, or his designated deputy. The board shall buy liquor and alcohol at the lowest price and in the greatest variety reasonably obtainable.

* * *

Section 3. Section 304 of the act, amended December 9, 2002 (P.L.1653, No.212), is amended to read:

Section 304. When Sales May Be Made at Pennsylvania Liquor Stores.--(a) Except as provided for in subsection (b), every Pennsylvania Liquor Store shall be open for business week days, except [legal holidays or any day on which a general, municipal, special or primary election is being held, during such hours as the board, in its discretion, shall determine: Provided, That the Pennsylvania Liquor Stores in the case of a special election for members of the General Assembly or members of the Congress of the United States, when such special election is held on other than a primary, municipal or general election day, shall be open in those Legislative or Congressional Districts as though the day were not a special election day.] **holidays as that term is defined in section 102.** The board may, with the approval of the Governor, temporarily close any store in any municipality.

(b) Certain Pennsylvania Liquor Stores operated by the board shall be open for Sunday retail sales between the hours of noon and five o'clock postmeridian, except that no Sunday sales shall occur on Easter Sunday or Christmas day. [For a two-year time period following the effective date of this subsection, the] **The** board shall open up to [ten] **twenty-five** per centum of the total number of Pennsylvania Liquor Stores at its discretion for Sunday sales as provided for in this subsection. [At the expiration of the two-year time period, the board shall conduct a review and determine whether the stores shall be closed or whether additional stores shall be opened for these Sunday sales.] The board shall submit yearly reports to the Appropriations and the Law and Justice Committees of the Senate and the Appropriations and the Liquor Control Committees of the House of Representatives summarizing the total dollar value of sales under this section.

Section 4. Section 305(f) and (h) of the act, amended July 17, 2003 (P.L.63, No.15) and December 30, 2003 (P.L.423, No.59), are amended and the section is amended by adding a subsection to read:

Section 305. Sales by Pennsylvania Liquor Stores.--* * *

(f) Every purchaser of liquor, alcohol, corkscrews, wine or liquor accessories, trade publications, **gift cards, gift certificates, wine- or liquor-scented candles** or wine glasses from a Pennsylvania Liquor Store shall receive a numbered receipt which shall show the price paid therefor and such other information as the board may prescribe. Copies of all receipts issued by a Pennsylvania Liquor Store shall be retained by and shall form part of the records of such store.

* * *

(h) Every Pennsylvania Liquor Store shall sell gift certificates which may be redeemed for [liquor] **any product sold by the board.** In addition, the board may sell corkscrews, wine and liquor accessories, **wine- or liquor-scented candles,** trade publications and wine sleeves at Pennsylvania Liquor Stores.

(i) **Notwithstanding any other provision of law to the contrary, the board may sell wine in containers having a capacity of six liters or less.**

Section 5. Section 414(b) of the act, added February 21, 2002 (P.L.103, No.10), is amended to read:

Section 414. Continuing Care Retirement Community Retail Licenses.--* * *

(b) Licenses issued under this section are restaurant liquor licenses for all purposes except as provided herein. However, the following additional restrictions and privileges apply:

(1) Licenses issued under this section are not subject to the quota restrictions of section 461.

(2) Sales of liquor and malt or brewed beverages may not occur from two o'clock antemeridian to seven o'clock antemeridian. In addition, sales may not occur prior to one o'clock postmeridian or after ten o'clock postmeridian on Sunday.

(3) Liquor and malt or brewed beverages sold or furnished by the licensee may be possessed anywhere within the continuing care retirement community regardless of whether that portion of the premises is licensed. However, no liquor or malt or brewed beverages sold or furnished by the licensee may be taken beyond the confines of the continuing care retirement community.

(4) Sales of liquor or malt or brewed beverages may occur in those portions of the premises licensed by the board as well as in rooms that are lived in or used by residents of the continuing care retirement community. Sales of liquor and malt or brewed beverages are limited to residents of the continuing care retirement community and the guests of residents in conjunction with the normal, regularly scheduled dining, entertainment or social activities of the continuing care retirement community.

(5) Licenses issued under this section are not subject to the provisions defining "restaurant" in section 102.

(6) Licenses issued under this section are subject to section 493(13) relating to employment of minors, with the exception that the minimum age threshold for employment on licensed premises shall be reduced from sixteen (16) to fourteen (14) years of age. The prohibition against minors under the age of eighteen (18) dispensing or serving alcoholic beverages shall remain in effect.

* * *

Section 5.1. Section 431(a.1), (a.2) and (b) of the act, amended or added June 18, 1998 (P.L.664, No.86), December 21, 1998 (P.L.1202, No.155) and December 9, 2002 (P.L.1653, No.212), are amended and the section is amended by adding a subsection to read:

Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.--* * *

(a.1) Any out of State manufacturer whose products are sold and delivered within this Commonwealth [and whose production exceeds 15,000 barrels per year] shall be authorized: to rent, lease or otherwise acquire space from an importing distributor or bailee for hire authorized by this act at no more than two locations per manufacturer for use of a segregated portion of a warehouse or other storage facility owned or operated by the importing distributor or bailee for hire at which the out of State manufacturer may store, **repackage** and sell malt or brewed beverages to any importing distributor to whom the out of State manufacturer has granted distribution rights pursuant to subsection (b) or to any purchaser outside this Commonwealth for delivery outside this Commonwealth; or to ship to its storage facility outside this Commonwealth. Such manufacturer may compensate the importing distributor or bailee for hire for any related storage, **repackaging** or delivery services. The out of State manufacturer must file with the Liquor Control Board the rate of compensation to be paid. A separate written application must be filed to acquire storage licenses, and the board may establish the information that must be provided on

the application. The initial filing must be made prior to any payments being made, and any subsequent changes in the rate of compensation must be filed within thirty days of any such change. Nothing in this act authorizing storage facilities for out of State manufacturers is intended to make any change in the manner malt or brewed beverages are distributed through the three-tier system.

(a.2) The board shall issue to a holder of a manufacturer's license [whose production exceeds 15,000 barrels per year] no more than two storage licenses per manufacturer to cover storage facilities separate from the location of the manufacturing facility. A manufacturer may use its storage facilities to receive, store, **repackage**, sell and distribute malt or brewed beverages in the same manner as it can at its place of manufacture **or it may rent, lease or otherwise acquire space from an importing distributor or bailee for hire authorized by this act in the same manner as an out of State manufacturer as set forth in subsection (a.1)**. A separate written application must be filed to acquire storage licenses, and the board is empowered to establish what information must be provided on that application. Nothing in this act authorizing off-site storage facilities for manufacturers is intended to make any change in the manner malt or brewed beverages are distributed through the three-tier system.

(b) The board shall issue to any reputable person who applies therefor, and pays the license fee hereinafter prescribed, a distributor's or importing distributor's license for the place which such person desires to maintain for the sale of malt or brewed beverages, not for consumption on the premises where sold, and in quantities of not less than a case or original containers containing one hundred twenty-eight ounces or more which may be sold separately as prepared for the market by the manufacturer at the place of manufacture. The board shall have the discretion to refuse a license to any person or to any corporation, partnership or association if such person, or any officer or director of such corporation, or any member or partner of such partnership or association shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the said license: And provided further, That, in the case of any new license or the transfer of any license to a new location, the board may, in its discretion, grant or refuse such new license or transfer if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises which is licensed by the board: And provided further, That the board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed. The board shall refuse any application for a new license or the transfer of any license to a location where the sale of liquid fuels or oil is conducted. The board may enter into an agreement with the applicant concerning additional restrictions on the license in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant. Failure by the applicant to adhere to the agreement will be sufficient cause to form the basis for a citation under section 471 and for the nonrenewal

of the license under section 470. If the board enters into an agreement with an applicant concerning additional restrictions, those restrictions shall be binding on subsequent holders of the license until the license is transferred to a new location or until the board enters into a subsequent agreement removing those restrictions. If the application in question involves a location previously licensed by the board, then any restrictions imposed by the board on the previous license at that location shall be binding on the applicant unless the board enters into a new agreement rescinding those restrictions. The board shall require notice to be posted on the property or premises upon which the licensee or proposed licensee will engage in sales of malt or brewed beverages. This notice shall be similar to the notice required of hotel, restaurant and club liquor licensees.

Except as hereinafter provided, such license shall authorize the holder thereof to sell or deliver malt or brewed beverages in quantities above specified anywhere within the Commonwealth of Pennsylvania, which, in the case of distributors, have been purchased only from persons licensed under this act as manufacturers or importing distributors, and in the case of importing distributors, have been purchased from manufacturers or persons outside this Commonwealth engaged in the legal sale of malt or brewed beverages or from manufacturers or importing distributors licensed under this article. In the case of an importing distributor, the holder of such a license shall be authorized to store **and repackage** malt or brewed beverages owned by [an out of State] a manufacturer at a segregated portion of a warehouse or other storage facility authorized by section 441(d) and operated by the importing distributor within its appointed territory and deliver such beverages to another importing distributor who has been granted distribution rights by the [out of State] manufacturer as provided herein. The importing distributor shall be permitted to receive a fee from the [out of State] manufacturer for any related storage, **repackaging** or delivery services. In the case of a bailee for hire hired by [an out of State] a manufacturer, the holder of such a permit shall be authorized: to receive [or store], **store and repackage** malt or brewed beverages [under the same conditions as permitted for a distributor or importing distributor under section 441(f)] produced by that [out of State] manufacturer for sale by that manufacturer to importing distributors to whom that [out of State] manufacturer has given distribution rights pursuant to this subsection or to purchasers outside this Commonwealth for delivery outside this Commonwealth; or to ship to that [out of State] manufacturer's storage facilities outside this Commonwealth. The bailee for hire shall be permitted to receive a fee from the [out of State] manufacturer for any related storage, **repackaging** or delivery services. The bailee for hire shall, as required in Article V of this act, keep complete and accurate records of all transactions, inventory, receipts and shipments and make all records and the licensed areas available for inspection by the board and for the Pennsylvania State Police, Bureau of Liquor Control Enforcement, during normal business hours.

Each out of State manufacturer of malt or brewed beverages whose products are sold and delivered in this Commonwealth shall give distributing rights for such products in designated geographical areas to specific importing distributors, and such importing distributor shall not sell or deliver malt or brewed beverages manufactured by the out of State manufacturer to any person issued a license under the provisions of this act whose

licensed premises are not located within the geographical area for which he has been given distributing rights by such manufacturer. Should a licensee accept the delivery of such malt or brewed beverages in violation of this section, said licensee shall be subject to a suspension of his license for at least thirty days: Provided, That the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer.

When a Pennsylvania manufacturer of malt or brewed beverages licensed under this article names or constitutes a distributor or importing distributor as the primary or original supplier of his product, he shall also designate the specific geographical area for which the said distributor or importing distributor is given distributing rights, and such distributor or importing distributor shall not sell or deliver the products of such manufacturer to any person issued a license under the provisions of this act whose licensed premises are not located within the geographical area for which distributing rights have been given to the distributor and importing distributor by the said manufacturer: Provided, That the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer. Nothing herein contained shall be construed to prevent any manufacturer from authorizing the importing distributor holding the distributing rights for a designated geographical area from selling the products of such manufacturer to another importing distributor also holding distributing rights from the same manufacturer for another geographical area, providing such authority be contained in writing and a copy thereof be given to each of the importing distributors so affected.

* * *

(f) (1) Any malt or brewed beverage produced outside this Commonwealth that is repackaged by a bailee for hire or importing distributor on behalf of an out of State manufacturer must be returned to the out of State manufacturer and come to rest out of State before it may reenter this Commonwealth. Such repackaged malt or brewed beverages must be distributed through the three-tier system. Any malt or brewed beverage that is repackaged by a bailee for hire or importing distributor on behalf of an in State manufacturer must be returned to the in State manufacturer and come to rest at the in State manufacturer's licensed facility.

(2) For purposes of this section, "repackage" shall mean any change or alteration to the containers or container configuration of a case.

Section 5.2. Section 461(b.3) of the act, amended February 21, 2002 (P.L.103, No.10), is amended to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each County.--* * *

(b.3) An intermunicipal transfer of a license or issuance of a license for economic development under subsection (b.1)(2)(i) must first be approved by the governing body of the

receiving municipality when the total number of existing restaurant liquor licenses and eating place retail dispenser licenses in the receiving municipality exceed one license per three thousand inhabitants. Upon request for approval of an intermunicipal transfer of a license or issuance of an economic development license by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer a license into the municipality or acquire an economic development license from the Pennsylvania Liquor Control Board. The governing body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer of a license or issuance of an economic development license. The municipality must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the municipality or its residents. A decision by the governing body of the municipality to deny the request may be appealed to the court of common pleas in the county in which the municipality is located. A copy of the approval must be submitted with the license application. **The approval requirement shall not apply to licenses transferred into a tax increment district created pursuant to the act of July 11, 1990 (P.L.465, No.113), known as the "Tax Increment Financing Act," located in a township of the second class that is located within a county of the second class if the district was created prior to December 31, 2002, and the governing body of the township has adopted an agreement at a public meeting that consents to the transfer of licenses into the tax increment district.**

* * *

Section 6. Section 470(a.1) and (b) of the act, amended December 21, 1998 (P.L.1202, No.155), are amended and the section is amended by adding a subsection to read:

Section 470. Renewal of Licenses; Temporary Provisions for Licensees in Armed Service.--* * *

(a.1) The Director of the Bureau of Licensing may object **and the board may refuse** a properly filed license application:

(1) if the licensee, its shareholders, directors, officers, association members, servants, agents or employes have violated any of the laws of this Commonwealth or any of the regulations of the board;

[(2) if the licensee has one or more adjudicated citations;]

(2) if the licensee, its shareholders, directors, officers, association members, servants, agents or employes have one or more adjudicated citations under this or any other license issued by the board or were involved in a license whose renewal was objected to by the Bureau of Licensing under this section;

(3) if the licensed premises no longer meets the requirements of this act or the board's regulations; or

[(4) due to the manner in which the licensed premises is being operated, the board can consider activity occurring on or about the licensed premises or in areas under licensee's control if the activity occurs when the premises is open for operation and if there is a relationship between the activity outside the premises and the manner in which the licensed premises is operated. The board may take into consideration whether the licensee has taken any substantial steps to address the activity occurring on or about the premises when the premises is open for operation.]

(4) due to the manner in which this or another licensed premises was operated while the licensee, its shareholders, directors, officers, association members, servants, agents or employes were involved with that license. When considering the manner in which this or another licensed premises was being operated, the board may consider activity that occurred on or about the licensed premises or in areas under the licensee's control if the activity occurred when the premises was open for operation and if there was a relationship between the activity outside the premises and the manner in which the licensed premises was operated. The board may take into consideration whether any substantial steps were taken to address the activity occurring on or about the premises.

* * *

(a.3) If the objection to the application is based on the reputation, criminal history, citation history or activity of one or more of the applicant's shareholders, directors, officers, association members, servants, agents or employes and not on the reputation, criminal history, citation history or activity attributable to the applicant, the board shall order the divestiture of the shareholders, directors, officers, association members, servants, agents or employes in question in lieu of refusing the application. If such divestiture does not occur within thirty (30) days of the board's order, then the board may refuse the application.

(b) [In cases where a licensee or his servants, agents or employes are arrested, charged with violating any of the laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, and where the board has on file in such cases reports of enforcement officers or investigators of the enforcement bureau or from other sources that a licensee or his servants, agents or employes have violated any of the aforementioned laws and a proceeding to revoke such licensee's license is or is about to be instituted, and such arrest occurs or report of violations is received or revocation proceeding instituted or about to be instituted during the time a renewal application of such license is pending before the board, the board may, in its discretion, renew the license, notwithstanding such alleged violations, but such renewal license may be revoked if and when the licensee or any of his servants, agents or employes are convicted of or plead guilty to violations under the previous license, as aforesaid, or if and when such previous license is for any reason revoked.] **In cases where a licensee or its servants, agents or employes are arrested or charged with violating any of the laws of this Commonwealth or if a licensee has one or more unadjudicated citations pending against the licensee at the time a renewal application for the license is pending before the board, the board may, in its discretion, renew the license; however, the renewed license may be subsequently revoked by the board if and when the licensee or its servants, agents or employes are convicted of the pending criminal charges or when the citation issued against the license is adjudicated by the Office of Administrative Law Judge.**

In the event [such] **the** renewal license is revoked by the board, neither the license fee paid for [such] **the** license nor any part thereof shall be returned to the licensee.

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Section 7. Section 472.5 of the act, added April 29, 1994 (P.L.212, No.30), is amended to read:

Section 472.5. Privately Owned Golf Courses Located in More than One County; **Equine Centers.**--(a) The board may issue to

a nonprofit corporation a club liquor license or club catering license if all of the following apply:

(1) The nonprofit corporation is incorporated in this Commonwealth.

(2) The nonprofit corporation operates a privately owned private golf course:

(i) having contiguous land situate in two or more municipalities;

(ii) in which one or more of the municipalities, but less than all, the granting of a liquor license has not been prohibited; and

(iii) in which at least one acre of the contiguous land is situate in more than one county and one or more municipalities.

(3) The board finds that the license will not be detrimental to any residential neighborhood.

(b) Subsection (a) shall not be construed to prohibit the issuance of club liquor licenses or club catering licenses which may otherwise be issued under the provisions of this act.

(c) **The board may issue public venue, hotel and restaurant liquor licenses to qualifying facilities at an equine center notwithstanding a vote by electors which prohibits the issuance of licenses for the retail sale of liquor and malt or brewed beverages.**

Section 8. The act is amended by adding sections to read:

Section 479. Point System for Certain Licensees.--(a) (1)

A numerical system for liquor license control is hereby established for use in cities of the first class. The system shall be utilized in conjunction with other provisions of this act for license transfer, renewal, suspension or revocation.

(2) Every liquor and malt beverages licensee in cities of the first class who has been cited for a violation under section 471 shall have points assessed to his license record as of the date of the final adjudication.

(b) The following shall be considered enhanced penalty violations, and the administrative law judge shall assign five to ten points depending upon the circumstances surrounding the violations to a license record for each and every enhanced penalty violation even when arising from the same core of operative facts:

(1) a violation of section 493(1) as relates to sales to minors and visibly intoxicated individuals;

(2) a violation of section 493(10) as relates to lewd, immoral or improper entertainment;

(3) a violation of section 493(14) as relates to permitting undesirable persons or minors to frequent premises;

(4) a violation of section 493(16) as relates to furnishing liquor at unlawful hours;

(5) a violation of section 493(21) as relates to refusing inspection;

(6) a violation of section 611 as relates to public nuisances;

(7) any violation of the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," permitted by the owner, employees or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises;

(8) a violation of 18 Pa.C.S. § 5902 (relating to prostitution and related offenses) committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises;

(9) a violation of 18 Pa.C.S. § 6301 (relating to corruption of minors) committed by the owner or operator of the licensed

premises or an agent thereof if the violation occurs at the licensed premises; or

(10) a violation of 18 Pa.C.S. (relating to crimes and offenses) if the violation is graded as a felony.

(c) Except as provided in subsections (b) and (d), the board shall, by regulation, assign points ranging on a scale of one to five for violations set forth in this act and its regulations. If a licensee or his agent is found to have violated two or more nonenhanced violations under this act arising from the same core of operative facts, points shall be assigned only for the violation for which the greatest number of points may be assessed.

(d) Two points shall be assessed for the following violations:

(1) section 467 as relates to failure to display license under transparent material;

(2) section 491(5) as relates to failure to properly dispose of empty liquor containers;

(3) section 493(6) as relates to brand or trade name on spigot;

(4) section 493(12) as relates to failure to have records on premises;

(5) section 493(20) as relates to unlawful advertising;

(6) 40 Pa. Code § 3.51 (relating to liquor) as relates to inside passages and connections to residence;

(7) 40 Pa. Code § 5.42 (relating to lighting) as relates to adequate lighting;

(8) 40 Pa. Code §§ 5.51(a) (relating to cleaning of coils, tap rods and connections) and 5.52 (relating to certificate or record required) as relates to cleaning of coils and maintenance of records on the cleaning of coils;

(9) a violation of any requirement of the board or the city to obtain or maintain the license issued by the board; or

(10) a violation of section 13(32) or (33) of the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," by any person in a licensed premises.

(e) Whenever points are assigned to a license record, the administrative law judge shall send to that licensee a notice regarding the points assigned and emphasizing the nature and effects of the point system. Failure to receive such letter shall not prevent the assignment of points or the subsequent revocation of license privileges under this section.

(f) As used in this section, "final adjudication" shall mean when the administrative law judge has rendered a decision on the citation notwithstanding any appeals of that decision.

(g) The establishment of a point system does not in any way limit the right of an administrative law judge to revoke a license under section 471, nor does it limit the board's rights to not renew a license or amusement permit under sections 470 and 478.

Section 480. Removal of Points.--Points assigned to any license record shall be removed at the rate of three points for each twelve consecutive months of operation of the establishment in which such licensee has not been subject to a citation which results in the assignment of points under this act.

Section 481. School, Mandatory Safekeeping or Revocation of License Privilege on Accumulation of Points.--(a) Except as provided for in subsection (c), when any license accumulates ten points or more, the administrative law judge shall require the license holder to become compliant with and remain compliant with the responsible alcohol management provisions of section

471.1. Failure to comply with such an order within ninety days shall result in two additional points being assessed against the license record.

(b) When any license accumulates fifteen points or more, the administrative law judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party in an arm's-length transaction. A license transferred under this subsection shall have the points assigned to it reduced to ten upon completion of the transfer. If within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two additional points shall be removed from the license record.

(c) Notwithstanding any other provision of this act, when any license accumulates two enhanced penalty violations under section 479(b) within a two-year period or accumulates two or more points within two years after an initial accumulation of ten points, the administrative law judge shall revoke the license and the license may be immediately confiscated by the board, Pennsylvania State Police or local law enforcement. This shall be followed by a hearing before the administrative law judge within fifteen days following seizure.

(d) An appeal of an order issued under this section shall not act as an automatic stay of the order. The licensee has the right to seek a supersedeas under the Pennsylvania Rules of Procedure. The application for the appellate supersedeas would be submitted to the reviewing authority and would have to demonstrate how the administrative law judge abused his authority, committed an error of law or failed to base his findings of fact upon substantial evidence.

Section 482. Points Follow Transfer of License.--Points assigned to the license record shall transfer with the license to the new owner. If within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two points shall be removed from the license record.

Section 9. Section 493(1) and (2) of the act, amended February 18, 1998 (P.L.162, No.25), are amended and the section is amended by adding a clause 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--

(1) Furnishing Liquor or Malt or Brewed Beverages to Certain Persons. For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, [or to any insane person,] or to any minor[, or to habitual drunkards, or persons of known intemperate habits.]: **Provided further, That notwithstanding any other provision of law, no cause of action will exist against a licensee or the board or any employe, servant or agent of such licensee or the board for selling, furnishing or giving any liquor or malt or brewed beverages or permitting any liquor or malt or brewed beverages to be sold, furnished or given to any insane person, any habitual drunkard or person of known intemperate habits unless**

the person sold, furnished or given alcohol is visibly intoxicated or is a minor.

(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 hotel or club to a bona fide guest or member, or by railroad or pullman companies in dining, club or buffet cars to passengers, for consumption while enroute, holding authorized credit cards issued by railroad or railroad credit bureaus or by hotel, restaurant, retail dispenser eating place, club and public service licensees, importing distributors or distributors to customers not possessing a license under this article and holding credit cards issued in accordance with regulations of the board or credit cards issued by banking institutions subject to State or Federal regulation: Provided further, That nothing herein contained shall be construed to prohibit the use of checks or drafts drawn on a bank, banking institution, trust company or similar depository, organized and existing under the laws of the United States of America or the laws of any state, territory or possession thereof, in payment for any liquor or malt or brewed beverages if the purchaser is the payor of the check or draft and the licensee is the payee[.]: **Provided further, That notwithstanding any other provision of this act to the contrary, it shall be unlawful for an importing distributor or distributor to accept cash for payment of any malt or brewed beverages from anyone possessing a license issued under this article.** No right of action shall exist to collect any claim for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for original containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for such containers or as a deposit on containers when title is retained by the vendor, if such original containers have been returned to the licensee. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for liquor or malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the liquor or malt or brewed beverages so sold are actually transported and delivered to points outside of the Commonwealth: Provided, however, That as to all transactions affecting malt or brewed beverages to be resold or consumed within this Commonwealth, every licensee shall pay and shall require cash deposits on all returnable original containers and all such cash deposits shall be refunded upon return of the original containers.

* * *

(30) **Pyrotechnics Prohibited.** For any licensee, his servants, agents or employes, except licensees where pyrotechnic displays are performed by a pyrotechnic operator licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and are approved by a municipal fire official, to store, handle, use or display any pyrotechnics within a building on the licensed premises. For purposes of this clause, "pyrotechnics" shall mean any chemical mixture, including pyrotechnic compositions, intended to produce a visible or audible effect by combustion, deflagration or detonation as defined by section 1.5.52 of the National Fire Protection Association Standard 1126 entitled

"Standard for the Use of Pyrotechnics before a Proximate Audience," 1992 Edition.

Section 10. Section 505.2 of the act, amended November 10, 1999 (P.L.514, No.47), December 9, 2002 (P.L.1653, No.212), December 16, 2002 (P.L.1806, No.221) and July 17, 2003 (P.L.63, No.15), is amended to read:

Section 505.2. Limited Wineries.--(a) In the interest of promoting tourism and recreational development in Pennsylvania, holders of a limited winery license may:

(1) Produce alcoholic ciders, wines and wine coolers, subject to the exceptions provided under this section, only from [fruits] **an agricultural commodity** grown in Pennsylvania.

(2) Sell alcoholic cider, wine and wine coolers produced by the limited winery or purchased in bulk in bond from another Pennsylvania limited winery on the licensed premises, under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and public service liquor licensees, and to Pennsylvania winery licensees: Provided, That a limited winery shall not, in any calendar year, purchase alcoholic cider or wine produced by other limited wineries in an amount in excess of fifty per centum of the alcoholic cider or wine produced by the purchasing limited winery in the preceding calendar year. In addition, the holder of a limited winery license may purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process. Such wine may be sold in bottles bearing the purchasing limited winery's label or the producing limited winery's label. Such wines, if sold by the board, may be sold by the producing limited winery to the purchasing limited winery at a price lower than the price charged by the board.

(3) Separately or in conjunction with other limited wineries, sell alcoholic cider, wine and wine coolers produced by the limited winery on no more than five (5) board-approved locations other than the licensed premises, with no bottling or production requirement at those additional board-approved locations and under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and public service liquor licensees. If two or more limited wineries apply to operate an additional board-approved location in conjunction with each other, the wineries need only have one board-approved manager for the location, need only pay one application fee and need not designate specific or distinct areas for each winery's licensed area. Each limited winery must file an application for such an additional board-approved location, and such location shall count as one of the five permitted for each limited winery. Each limited winery is responsible for keeping only its own complete records. A limited winery may be cited for a violation of the recordkeeping requirements of sections 512 and 513 pertaining to its own records only.

(4) At the discretion of the board, obtain a special permit to participate in alcoholic cider, wine and food expositions off the licensed premises. A special permit shall be issued upon proper application and payment of a fee of thirty dollars (\$30) per day for each day of permitted use, not to exceed five (5) consecutive days. The total number of days for all the special permits may not exceed forty (40) days in any calendar year. A special permit shall entitle the holder to engage in the sale **by the glass, by the bottle or in case lots** of alcoholic cider or wine produced [by the bottle or in case lots] by the permittee under the authority of a limited winery

license. Holders of special permits may provide tasting samples of wines in individual portions not to exceed one fluid ounce. Samples at alcoholic cider, wine and food expositions may be sold or offered free of charge. Except as provided herein, limited wineries utilizing special permits shall be governed by all applicable provisions of this act as well as by all applicable regulations or conditions adopted by the board.

For the purposes of this clause, "alcoholic cider, wine and food expositions" are defined as affairs held indoors or outdoors with the primary intent of educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders and wines in conjunction with suitable food displays, demonstrations and sales. Alcoholic cider, wine and food expositions may also include activities other than alcoholic cider, wine and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and similar activities.

(5) Apply for and hold a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license to sell for consumption at the restaurant or limited winery on the licensed winery premises, liquor, wine and malt or brewed beverages regardless of the place of manufacture under the same conditions and regulations as any other hotel liquor license, restaurant liquor license or malt and brewed beverages retail license.

(6) (i) Secure a permit from the board to allow the holder of a limited winery license to use up to twenty-five per centum permitted fruit, not wine, in the current year's production. Each permit is valid only for the calendar year in which it is issued.

(ii) The fee for a permit to import and use permitted fruit shall be in an amount to be determined by the board.

(iii) The purpose of this section is to increase the productivity of limited wineries while at the same time protecting the integrity and unique characteristics of wine produced from fruit primarily grown in this Commonwealth. Prevailing climatic conditions have a significant impact on the character of the fruit. Accordingly, "permitted fruit" shall mean fruit grown or juice derived from fruit grown within three hundred fifty (350) miles of the winery.

(iv) The department is authorized to promulgate regulations requiring the filing of periodic reports by limited wineries to ensure compliance with the provisions of this section.

[(v) This clause shall expire on December 31, 2004.]

(6.1) Sell food for consumption on or off the licensed premises and sell by the glass only wine and alcoholic ciders that may otherwise be sold by the bottle.

(6.2) Sell wine- or liquor-scented candles acquired or produced by the limited winery.

(6.3) Sell alcoholic cider, wine and wine coolers only between the hours of nine o'clock antemeridian and nine o'clock postmeridian. During the period from Thanksgiving Day through New Year's Day, limited winery sales locations may remain open to conform with the closing times of neighboring mall or shopping district businesses but no later than ten o'clock postmeridian. A limited winery also may request approval from the board to extend sales hours in individual locations at other times during the year or beyond the limits set forth in this clause. The request shall be made in writing to the board's Office of the Chief Counsel and shall detail the exact locations where sales hours are proposed to be extended, the proposed

hours and dates of extended operation and the reason for the proposed extended hours.

[(7)] (b) The total production of alcoholic ciders, wine and wine coolers by a limited winery may not exceed two hundred thousand (200,000) gallons per year.

(c) The term "agricultural commodity" as used in this section shall include any of the following: agricultural, apicultural, horticultural, silvicultural and viticultural commodities.

Section 11. The act is amended by adding a section to read:

Section 505.4. Distilleries.--The board may issue a distillery of historical significance license to any distillery which was established prior to January 1, 1875. The holder of the license may manufacture and sell liquor produced on the licensed premises to the board, to entities licensed by the board and to the public under such conditions and regulations as the board may enforce. Production at the distillery of historical significance shall be limited to an amount not to exceed twenty thousand (20,000) gallons per year. The distillery does not need to establish continuous operation since January 1, 1875, in order to qualify for a license under this section.

Section 12. (12 repealed Nov. 29, 2006, P.L.1421, No.155)

Section 13. This act shall take effect as follows:

(1) The amendment or addition of section 207(a), 305(f) and (h), 472.5 and 505.2 of the act shall take effect immediately.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

APPROVED--The 8th day of December, A. D. 2004.

EDWARD G. RENDELL