

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1096 Session of
2023

INTRODUCED BY MALAGARI, McANDREW, MADDEN, SANCHEZ, HILL-EVANS,
LEADBETER, FREEMAN, BURGOS, HANBIDGE, GUENST, CEPEDA-FREYTIZ,
CERRATO, WEBSTER, KENYATTA AND T. DAVIS, MAY 3, 2023

SENATOR REGAN, LAW AND JUSTICE, IN SENATE, AS AMENDED,
OCTOBER 24, 2023

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," in
17 preliminary provisions, further providing for definitions;
18 and, in licenses and regulations and liquor, alcohol and malt
19 and brewed beverages, further providing for public venue
20 license ~~and~~, FOR MALT AND BREWED BEVERAGES MANUFACTURERS', <--
21 DISTRIBUTORS' AND IMPORTING DISTRIBUTORS' LICENSES, FOR
22 INTERLOCKING BUSINESS PROHIBITED, for limiting number of
23 retail licenses to be issued in each county AND FOR UNLAWFUL <--
24 ACTS RELATIVE TO MALT OR BREWED BEVERAGES AND LICENSEES.

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

27 Section 1. The definition of "public venue" in section 102

1 of the act of April 12, 1951 (P.L.90, No.21), known as the
2 Liquor Code, is amended to read:

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

6 * * *

7 "Public venue" shall mean a stadium, arena, convention
8 center, museum, zoo, amphitheater or [similar structure.]
9 amusement park as defined in section 2 of the act of June 18,
10 1984 (P.L.384, No.81), known as the "Amusement Ride Inspection
11 Act," situated on at least forty (40) acres of land regardless
12 of seating capacity, or similar structure. If the public venue
13 is a cruise terminal owned or leased by a port authority created
14 under the act of June 12, 1931 (P.L.575, No.200), entitled "An
15 act providing for joint action by Pennsylvania and New Jersey in
16 the development of the ports on the lower Delaware River, and
17 the improvement of the facilities for transportation across the
18 river; authorizing the Governor, for these purposes, to enter
19 into an agreement with New Jersey; creating The Delaware River
20 Joint Commission and specifying the powers and duties thereof,
21 including the power to finance projects by the issuance of
22 revenue bonds; transferring to the new commission all the powers
23 of the Delaware River Bridge Joint Commission; and making an
24 appropriation," it shall have no permanent seating requirement.
25 If the public venue is an open-air amphitheater owned by a port
26 authority created under the act of December 6, 1972 (P.L.1392,
27 No.298), known as the "Third Class City Port Authority Act," it
28 shall have no permanent seating requirement. If the public venue
29 is owned by a political subdivision, a municipal authority, the
30 Commonwealth, an authority created under the act of July 29,

1 1953 (P.L.1034, No.270), known as the "Public Auditorium
2 Authorities Law," an authority created under Article XXV-A of
3 the act of July 28, 1953 (P.L.723, No.230), known as the "Second
4 Class County Code," an art museum established under the
5 authority of the act of April 6, 1791 (3 Sm.L.20, No.1536),
6 entitled "An act to confer on certain associations of the
7 citizens of this commonwealth the powers and immunities of
8 corporations, or bodies politic in law," or an authority created
9 under Article XXIII (n) or (o) of the act of August 9, 1955
10 (P.L.323, No.130), known as "The County Code," it shall have
11 permanent seating for at least one thousand (1,000) people;
12 otherwise, it shall have permanent seating for at least two
13 thousand (2,000) people. The term shall also mean any regional
14 history center, multipurpose cultural and science facility,
15 museum or convention or trade show center, regardless of owner
16 and seating capacity, that has a floor area of at least sixty
17 thousand (60,000) square feet in one building or is comprised of
18 no less than three hundred fifty (350) acres and is a member of
19 the American Public Garden Association. The term shall also mean
20 a convention or conference center owned by a city of the third
21 class or a university which is a member of the Pennsylvania
22 State System of Higher Education which is operated by a
23 university foundation or alumni association, regardless of
24 seating capacity, that has a floor area of at least fifteen
25 thousand (15,000) square feet in one building. The term shall
26 also mean a visitor center, regardless of floor area or seating
27 capacity, that was established under the authority of the
28 Gateway Visitor Center Authorization Act of 1999 (Public Law
29 106-131, 113 Stat. 1678, 16 U.S.C. § 407m).

30 * * *

Section 2. Section 412(f)(1) of the act is amended and the section is amended by adding subsections to read:

Section 412. Public Venue License.--* * *

(f) Licenses issued under this section are to be considered restaurant liquor licenses. However, the following additional restrictions and privileges apply:

(1) Sales may only be made one hour before, during and one hour after any athletic performance, performing arts event, trade show, convention, banquet or any other performance at the facility; however, sales may not be made from two o'clock antemeridian to seven o'clock antemeridian. In addition, sales may not occur prior to eleven o'clock antemeridian on Sundays or seven o'clock antemeridian on Mondays. Notwithstanding this [section, facilities that had been licensed under former sections] section:

(i) Facilities that had been licensed under former sections 408.9 and 408.14 may sell liquor and/or malt or brewed beverages anytime except from two o'clock antemeridian to seven o'clock antemeridian or prior to eleven o'clock antemeridian on Sundays or seven o'clock antemeridian on Mondays, regardless of whether there is a performance at the facility.

(ii) Amusement parks may sell liquor and malt or brewed beverages from eleven o'clock antemeridian to eleven o'clock postmeridian.

* * *

(h) An amusement park that holds a restaurant license before January 1, 2022, and seeks to obtain a public venue license shall exchange one existing restaurant license to the board in return for a public venue license at no cost. A restaurant license exchanged under this subsection shall be subject to a

1 license auction under section 470.3.

2 (i) An amusement park that holds a public venue license
3 shall utilize a transaction scan device to verify the age of an
4 individual who appears to be under thirty-five years of age
5 before making a sale of liquor and malt or brewed beverages,
6 however, an acceptable form of identification under section
7 495(a) that cannot be scanned may be accepted by the licensee.
8 An amusement park may not sell or share data from the use of a
9 transaction scan device, provided that the licensee may use the
10 data to show the enforcement bureau of the board that the
11 licensee is in compliance with this act. As used in this
12 subsection, the term "transaction scan device" means a device
13 capable of deciphering, in an electronically readable format,
14 the information encoded on the magnetic strip or bar code of an
15 identification card under section 495(a).

16 (j) As used in this section, the term "amusement park" shall
17 have the same meaning as defined in section 2 of the act of June
18 18, 1984 (P.L.384, No.81), known as the "Amusement Ride
19 Inspection Act."

20 ~~Section 3. Section 461(c) (9.2) of the act is amended to~~ <--
21 ~~read:~~

22 SECTION 3. SECTION 431(D) (1) OF THE ACT IS AMENDED AND THE <--
23 SUBSECTION IS AMENDED BY ADDING A PARAGRAPH TO READ:

24 SECTION 431. MALT AND BREWED BEVERAGES MANUFACTURERS',
25 DISTRIBUTORS' AND IMPORTING DISTRIBUTORS' LICENSES.--* * *

26 (D) (1) ALL DISTRIBUTING RIGHTS AS HEREINABOVE REQUIRED
27 SHALL BE IN WRITING, SHALL BE EQUITABLE IN THEIR PROVISIONS AND
28 SHALL BE SUBSTANTIALLY SIMILAR AS TO TERMS AND CONDITIONS WITH
29 ALL OTHER DISTRIBUTING RIGHTS AGREEMENTS BETWEEN THE
30 MANUFACTURER GIVING SUCH AGREEMENT AND ITS OTHER IMPORTING

1 DISTRIBUTORS AND DISTRIBUTORS SHALL NOT BE MODIFIED, CANCELLED,
2 TERMINATED OR RESCINDED BY THE MANUFACTURER WITHOUT GOOD CAUSE,
3 AND SHALL CONTAIN A PROVISION IN SUBSTANCE OR EFFECT AS FOLLOWS:
4 "THE MANUFACTURER RECOGNIZES THAT THE IMPORTING DISTRIBUTOR AND
5 DISTRIBUTOR ARE FREE TO MANAGE THEIR BUSINESS IN THE MANNER THE
6 IMPORTING DISTRIBUTOR AND DISTRIBUTOR DEEM BEST AND THAT THIS
7 PREROGATIVE VESTS IN THE IMPORTING DISTRIBUTOR AND DISTRIBUTOR
8 THE EXCLUSIVE RIGHT TO ESTABLISH A SELLING PRICE, TO SELECT THE
9 BRANDS OF MALT OR BREWED BEVERAGES THEY WISH TO HANDLE AND TO
10 DETERMINE THE EFFORTS AND RESOURCES, INCLUDING THE E-COMMERCE
11 PLATFORM IF ONE IS USED, WHICH THE IMPORTING DISTRIBUTOR AND
12 DISTRIBUTOR WILL EXERT TO DEVELOP AND PROMOTE THE SAME OF THE
13 MANUFACTURER'S PRODUCTS HANDLED BY THE IMPORTING DISTRIBUTOR AND
14 DISTRIBUTOR. HOWEVER, THE MANUFACTURER EXPECTS THAT THE
15 IMPORTING DISTRIBUTOR AND DISTRIBUTOR WILL PRICE COMPETITIVELY
16 THE PRODUCTS HANDLED BY THEM, DEVOTE REASONABLE EFFORT AND
17 RESOURCES TO THE SALE OF SUCH PRODUCTS AND MAINTAIN A REASONABLE
18 SALES LEVEL." "GOOD CAUSE" SHALL MEAN THE FAILURE BY ANY PARTY
19 TO AN AGREEMENT, WITHOUT REASONABLE EXCUSE OR JUSTIFICATION, TO
20 COMPLY SUBSTANTIALLY WITH AN ESSENTIAL, REASONABLE AND
21 COMMERCIALY ACCEPTABLE REQUIREMENT IMPOSED BY THE OTHER PARTY
22 UNDER THE TERMS OF AN AGREEMENT.

23 (1.1) PROVIDING OR USING AN E-COMMERCE PLATFORM SHALL NOT BE
24 CONSTRUED AS PROVIDING A THING OF VALUE UNDER SECTION 493(24).

25 * * *

26 SECTION 4. SECTION 443 OF THE ACT IS AMENDED BY ADDING A
27 SUBSECTION TO READ:

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

29 (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
30 CONTRARY, A MALT OR BREWED BEVERAGE MANUFACTURER AND ITS

OFFICERS, DIRECTORS, SHAREHOLDERS, SERVANTS, AGENTS OR EMPLOYES
MAY PROVIDE AN E-COMMERCE PLATFORM OR ACCESS TO AN E-COMMERCE
PLATFORM TO A DISTRIBUTOR OR IMPORTING DISTRIBUTOR. THE E-
COMMERCE PLATFORM OR ACCESS TO THE E-COMMERCE PLATFORM MAY BE
PROVIDED FREE OF CHARGE OR MAY BE MADE AVAILABLE FOR A FEE.

SECTION 5. SECTION 461(C) (9.2) OF THE ACT IS AMENDED TO
READ:

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

(c) The word "hotel" as used in this section shall mean any
reputable place operated by a responsible person of good
reputation where the public may, for a consideration, obtain
sleeping accommodations, and which shall have the following
number of bedrooms and requirements in each case--at least one-
half of the required number of bedrooms shall be regularly
available to transient guests seven days weekly, except in
resort areas; at least one-third of such bedrooms shall be
equipped with hot and cold water, a lavatory, commode, bathtub
or shower and a clothes closet; and an additional one-third of
the total of such required rooms shall be equipped with lavatory
and commode:

* * *

(9.2) For two years after the effective date of this clause,
upon application to the board and payment of a fee of thirty
thousand dollars (\$30,000) by a hotel licensee, the board shall
convert a hotel license under [clause (8)] clauses (8) and (8.1)
of this subsection for a hotel licensee that applied for an
exemption under clause (9) or (9.1) of this subsection before
January 1, [2019] 2024, to a restaurant license without regard
to the quota restrictions set forth in subsection (a). This

1 clause shall not apply to a hotel license with a pending
2 objection by the director of the Bureau of Licensing or the
3 board under section 470(a.1) until the application for renewal
4 of the hotel license is approved. This clause shall not apply to
5 hotel licenses in a city of the first class. An application to
6 transfer a restaurant license that was converted from a hotel
7 license under this clause in accordance with section 404 within
8 five years after the board received the application for the
9 restaurant license shall be subject to a fee of twenty-five per
10 centum (25%) or thirty thousand dollars (\$30,000), whichever is
11 greater, of the transactional cost for the transfer of the
12 restaurant license to be paid by the seller of the license. As
13 used in this paragraph, the term "transactional cost" shall mean
14 the cost of the restaurant license.

15 * * *

16 SECTION 6. SECTION 492 OF THE ACT IS AMENDED BY ADDING A <--
17 PARAGRAPH TO READ:

18 SECTION 492. UNLAWFUL ACTS RELATIVE TO MALT OR BREWED
19 BEVERAGES AND LICENSEES.--

20 IT SHALL BE UNLAWFUL--

21 * * *

22 (23) INTERFERING WITH THE USE OF E-COMMERCE. FOR ANY
23 MANUFACTURER OR RETAIL LICENSEE TO PROHIBIT OR MANDATE ANY
24 PARTICULAR E-COMMERCE PLATFORM BY ANY DISTRIBUTOR OR IMPORTING
25 DISTRIBUTOR.

26 Section ~~4~~ 7. This act shall take effect in 60 days. <--