

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 103 Session of
1993

INTRODUCED BY OLIVER, RIEGER, BISHOP, LaGROTTA, TIGUE, PESCI,
TRELLO, KENNEY, STABACK, KELLER, CURRY, SCHULER, OLASZ,
MIHALICH, LINTON, LEDERER, GIGLIOTTI, KIRKLAND, DALEY, JAMES,
DONATUCCI, JOSEPHS, HUGHES, PRESTON AND WILLIAMS,
JANUARY 27, 1993

SENATOR STEWART, LAW AND JUSTICE, IN SENATE, AS AMENDED,
JUNE 21, 1993

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 ~~enforcement and for~~ the issuance or <—
18 transfer of liquor licenses in license districts in cities of
19 the first class; AND PROVIDING FOR THE ISSUANCE OF A <—
20 RESTRICTED RESTAURANT LICENSE FOR CERTAIN PREMISES IN A CITY
21 OF THE FIRST CLASS.

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

24 Section 1. ~~Sections 211(d) and~~ SECTION 404 of the act of <—
25 April 12, 1951 (P.L.90, No.21), known as the Liquor Code,

1 reenacted and amended June 29, 1987 (P.L.32, No.14), are IS <—
2 amended to read:

3 ~~Section 211. Enforcement. * * *~~ <—

4 ~~(d) The Office of Chief Counsel for the Pennsylvania State~~
5 ~~Police shall represent the enforcement bureau in all enforcement~~
6 ~~proceedings brought before the Office of Administrative Law~~
7 ~~Judge or any other adjudicatory body. The enforcement bureau is~~
8 ~~bound by legal opinions issued by the board or its counsel.~~

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

1 license or transfer is applied for a place which is within two
2 hundred feet of any other premises which is licensed by the
3 board: And provided further, That the board shall refuse any
4 application for a new license or the transfer of any license to
5 a new location if, in the board's opinion, such new license or
6 transfer would be detrimental to the welfare, health, peace and
7 morals of the inhabitants of the neighborhood within a radius of
8 five hundred feet of the place proposed to be licensed: And
9 provided further, That in any license district in a city of the
10 first class, the board shall MAY, IN ITS OPINION, refuse any <—
11 application for a new license or for any person-to-person and
12 place-to-place or place-to-place transfer of any license if the
13 licensed premises is or would be within three hundred feet of
14 any church, hospital, charitable institution, school or public
15 playground, or within two hundred feet of any other premises
16 licensed by the board ~~or~~ AND, if, in the opinion of the board <—
17 the licensed premises is or would be detrimental to the welfare,
18 health, peace and morals of SUCH CHURCH, HOSPITAL, SCHOOL, <—
19 PUBLIC PLAYGROUND AND/OR the inhabitants of the neighborhood
20 within a radius of five hundred feet of the licensed premises:
21 And provided further, That the board shall not issue new
22 licenses in any license district more than twice each license
23 year, effective from specific dates fixed by the board, and new
24 licenses shall not be granted, except for hotels as defined in
25 this act, unless the application therefor shall have been filed
26 at least thirty days before the effective date of the license:
27 And provided further, That nothing herein contained shall
28 prohibit the board from issuing a new license for the balance of
29 any unexpired term in any license district to any applicant in
30 such district, who shall have become eligible to hold such

1 license as the result of legislative enactment, when such
2 enactment shall have taken place during the license term of that
3 district for which application is made or within the thirty days
4 immediately preceding such term, nor shall anything herein
5 contained prohibit the board from issuing at any time a new
6 license for an airport restaurant, or municipal golf course, as
7 defined in section 461 of this act, for the balance of the
8 unexpired license term in any license district: And provided
9 further, That the board shall have the discretion to refuse a
10 license to any person or to any corporation, partnership or
11 association if such person, or any officer or director of such
12 corporation, or any member or partner of such partnership or
13 association shall have been convicted or found guilty of a
14 felony within a period of five years immediately preceding the
15 date of application for the said license. The board shall refuse
16 any application for a new license or the transfer of any license
17 to a location where the sale of liquid fuels or oil is
18 conducted.

19 ~~Section 2. This act shall take effect in 60 days.~~ <—

20 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

21 SECTION 408.11. SEASONAL OUTDOOR CAFE.--(A) THE BOARD IS
22 AUTHORIZED TO ISSUE A RESTRICTED RESTAURANT LICENSE IN A CITY OF
23 THE FIRST CLASS FOR THE RETAIL SALE OF LIQUOR AND MALT OR BREWED
24 BEVERAGES BY THE GLASS, OPEN BOTTLE OR OTHER CONTAINER OR IN ANY
25 MIXTURE FOR CONSUMPTION IN A SEASONAL TEMPORARY OUTDOOR CAFE
26 LOCATED ON PREMISES OWNED BY A CITY OF THE FIRST CLASS.

27 (B) THE APPLICATION FOR A LICENSE UNDER THIS SECTION MAY BE
28 FILED AT ANY TIME BY A CONCESSIONAIRE SELECTED AND CERTIFIED BY
29 THE CITY OF THE FIRST CLASS AND SHALL CONFORM WITH ALL
30 REQUIREMENTS FOR RESTAURANT LIQUOR LICENSES AND APPLICATIONS.

1 EXCEPT AS MAY OTHERWISE BE PROVIDED HEREIN. THE APPLICANT SHALL
2 SUBMIT SUCH OTHER INFORMATION AS THE BOARD MAY REQUIRE. AN
3 APPLICATION SHALL BE IN WRITING ON FORMS PRESCRIBED BY THE BOARD
4 AND SHALL BE SIGNED AND SUBMITTED TO THE BOARD BY THE APPLICANT.
5 THE FILING FEE SHALL BE AS PRESCRIBED BY LAW FOR RESTAURANT
6 LICENSES.

7 (C) UPON RECEIPT OF THE APPLICATION IN PROPER FORM AND THE
8 APPLICATION FEE AND UPON BEING SATISFIED THAT THE APPLICANT IS
9 OF GOOD REPUTE AND FINANCIALLY RESPONSIBLE, THE BOARD SHALL
10 ISSUE A LICENSE TO THE APPLICANT.

11 (D) THE LICENSE SHALL BE ISSUED FOR THE SAME PERIOD OF TIME
12 AS PROVIDED FOR RESTAURANT LICENSES AND SHALL BE RENEWED AS
13 PROVIDED IN SECTION 402. THE LICENSE SHALL TERMINATE UPON
14 REVOCATION BY THE BOARD OR UPON TERMINATION OF THE CONTRACT
15 BETWEEN THE CONCESSIONAIRE AND THE CITY OF THE FIRST CLASS.

16 (E) THE CHARACTERISTICS OF A RESTAURANT SET FORTH IN SECTION
17 102 SHALL NOT APPLY TO THE SEASONAL TEMPORARY OUTDOOR CAFE
18 LICENSED UNDER THIS SECTION. THE SEASONAL TEMPORARY OUTDOOR CAFE
19 SHALL BE AN OPEN-AIR FACILITY WITH TABLES AND CHAIRS SUFFICIENT
20 TO SEAT AT LEAST THIRTY PERSONS. THE SEASONAL TEMPORARY OUTDOOR
21 CAFE WILL CONSIST OF A TEMPORARY STRUCTURE MEASURING NOT LESS
22 THAN FOURTEEN FEET BY TEN FEET BY TEN FEET WITH A TWENTY FEET BY
23 TWENTY FEET TENT ADJACENT TO OR CONNECTED TO THIS STRUCTURE OVER
24 A TWENTY-FOUR FEET BY TWENTY-FOUR FEET DECK AND LOCATED ON
25 PROPERTY OWNED BY A CITY OF THE FIRST CLASS.

26 (F) THE PENAL SUM OF THE BOND WHICH SHALL BE FILED BY AN
27 APPLICANT FOR A LICENSE ISSUED UNDER THIS SECTION, PURSUANT TO
28 SECTION 465, SHALL BE TWO THOUSAND DOLLARS (\$2,000).

29 (G) SALES BY THE HOLDER OF A LICENSE ISSUED UNDER THIS
30 SECTION MAY BE MADE, EXCEPT TO THOSE PERSONS PROHIBITED UNDER

1 CLAUSE (1) OF SECTION 493, ON PREMISES OWNED BY THE CITY OF THE
2 FIRST CLASS AND AVAILABLE FOR USE DURING THE HOURS IN WHICH THE
3 SEASONAL TEMPORARY CAFE IS OPERATED AND UP TO ONE HOUR AFTER THE
4 SCHEDULED CLOSING, AND AT FUNCTIONS WHICH ARE INCIDENTAL TO THE
5 SEASONAL TEMPORARY CAFE, BUT SUCH SALES MAY NOT BE MADE BEYOND
6 THE HOURS EXPRESSED IN THIS ACT FOR THE SALE OF LIQUOR BY
7 RESTAURANT LICENSEES: PROVIDED, HOWEVER, THAT SUCH SALES MAY BE
8 MADE ON SUNDAY BETWEEN THE HOURS OF TWELVE O'CLOCK NOON AND
9 EIGHT O'CLOCK POSTMERIDIAN.

10 (H) WHENEVER A CONTRACT IS TERMINATED PRIOR TO THE
11 EXPIRATION DATE PROVIDED IN THE CONTRACT BETWEEN THE CITY OF THE
12 FIRST CLASS AND THE CONCESSIONAIRE, THE CITY OF THE FIRST CLASS
13 MAY SELECT AND CERTIFY TO THE BOARD A DIFFERENT CONCESSIONAIRE
14 AND THE BOARD SHALL TRANSFER THAT LICENSE TO THE NEW
15 CONCESSIONAIRE. A LICENSE ISSUED UNDER THIS SECTION SHALL NOT BE
16 TRANSFERRED TO ANY OTHER LOCATION. IF THE LICENSE ISSUED UNDER
17 THIS SECTION IS REVOKED, THE BOARD SHALL ISSUE A NEW LICENSE TO
18 A QUALIFIED APPLICANT WITHOUT REGARD TO THE PROHIBITION IN
19 SECTION 471 AGAINST THE GRANT OF A LICENSE AT THE SAME PREMISES
20 FOR A PERIOD OF AT LEAST ONE YEAR.

21 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

22 (1) THE ADDITION OF SECTION 408.11 AND THIS SECTION
23 SHALL TAKE EFFECT IMMEDIATELY.

24 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
25 DAYS.