

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1033 Session of 2017

INTRODUCED BY ELLIS, JAMES, MUSTIO, WHEELAND, MILLARD, PICKETT, GROVE, HEFFLEY AND RYAN, MARCH 30, 2017

SENATOR McILHINNEY, LAW AND JUSTICE, IN SENATE, AS AMENDED, JUNE 28, 2017

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," in
17 licenses and regulations and liquor, alcohol and malt and
18 brewed beverages, providing for wine or spirits enhanced <--
19 permits. FURTHER PROVIDING FOR INTERLOCKING BUSINESS <--
20 PROHIBITED AND FOR UNLAWFUL ACTS RELATIVE TO LIQUOR, MALT AND
21 BREWED BEVERAGES AND LICENSEES.

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

24 Section 1. The act of April 12, 1951 (P.L.90, No.21), known <--
25 as the Liquor Code, is amended by adding a section to read:

26 Section 417. Wine or Spirits Enhanced Permits. (a) (1)

1 ~~The board shall issue a wine or spirits enhanced permit to a~~
2 ~~person holding and possessing a valid distributor or importing~~
3 ~~distributor license. Nothing in this section shall be construed~~
4 ~~to prohibit a person possessing a valid distributor or importing~~
5 ~~distributor license from acquiring both a wine enhanced permit~~
6 ~~and a spirits enhanced permit.~~

7 ~~(2) Nothing in this section may affect the ability of an~~
8 ~~existing licensee to operate within the scope of its current~~
9 ~~license as authorized by this act, except that no sales of wine~~
10 ~~or spirits may take place by an enhanced permit holder after~~
11 ~~eleven o'clock postmeridian of any day until eight o'clock~~
12 ~~antemeridian of the next day.~~

13 ~~(3) No wine or spirits enhanced permit may be issued to a~~
14 ~~license holder whose underlying license is subject to a pending~~
15 ~~objection by the director of the Bureau of Licensing or the~~
16 ~~board under section 470(a.1), until the matter is decided.~~
17 ~~Notwithstanding any other provision of law, a holder of a wine~~
18 ~~or spirits enhanced permit may continue to operate under the~~
19 ~~permit if its underlying license is objected to by the director~~
20 ~~of the Bureau of Licensing or the board under section 470(a.1),~~
21 ~~until the matter is decided.~~

22 ~~(4) A wine or spirits enhanced permit holder must be in~~
23 ~~compliance with the responsible alcohol management provisions~~
24 ~~under section 471.1.~~

25 ~~(5) A wine or spirits enhanced permit holder shall utilize a~~
26 ~~transaction scan device to verify the age of an individual who~~
27 ~~appears to be under thirty five years of age before making a~~
28 ~~sale of wine or spirits. A wine or spirits enhanced permit~~
29 ~~holder may not sell or share data from the use of a transaction~~
30 ~~scan device, provided that the licensee may use the data to show~~

1 ~~the enforcement bureau of the board that the licensee is in~~
2 ~~compliance with this act. As used in this paragraph, the term~~
3 ~~"transaction scan device" means a device capable of deciphering,~~
4 ~~in an electronically readable format, the information encoded on~~
5 ~~the magnetic strip or bar code of an identification card under~~
6 ~~section 495(a).~~

7 ~~(b) The initial application fee and renewal fees shall be as~~
8 ~~follows:~~

9 ~~(1) The initial application fee for a wine enhanced permit~~
10 ~~issued to a licensee shall be five thousand dollars (\$5,000).~~

11 ~~(2) The annual renewal fee for a wine enhanced permit shall~~
12 ~~be equal to two per centum of the costs of wine purchased from~~
13 ~~the board.~~

14 ~~(3) The initial application fee for a spirits enhanced~~
15 ~~permit issued to a licensee shall be five thousand dollars~~
16 ~~(\$5,000).~~

17 ~~(4) The annual renewal fee for a spirits enhanced permit~~
18 ~~shall be equal to two per centum of the costs of spirits~~
19 ~~purchased from the board.~~

20 ~~(c) A wine or spirits enhanced permit holder may sell~~
21 ~~unlimited quantities of wine or spirits.~~

22 ~~(d) All fees paid to the board under this section shall be~~
23 ~~deposited into the General Fund.~~

24 ~~(e) A wine or spirits enhanced permit holder selling wine or~~
25 ~~spirits shall be considered a Pennsylvania Liquor Store for~~
26 ~~purposes of collecting and remitting the taxes under Article II~~
27 ~~of the act of March 4, 1971 (P.L.6, No.2), known as the Tax~~
28 ~~Reform Code of 1971.~~

29 ~~Section 2. This act shall take effect in 60 days.~~

30 SECTION 1. SECTION 411(D) AND (E) OF THE ACT OF APRIL 12, <--

1 1951 (P.L.90, NO.21), KNOWN AS THE LIQUOR CODE, AMENDED JUNE 8,
2 2016 (P.L.273, NO.39) AND NOVEMBER 15, 2016 (P.L.1286, NO.166),
3 ARE AMENDED TO READ:

4 SECTION 411. INTERLOCKING BUSINESS PROHIBITED.--* * *

5 (D) EXCEPTING AS HEREIN PROVIDED, NO [HOTEL LICENSEE,
6 RESTAURANT LICENSEE OR CLUB LICENSEE, AND NO OFFICER, DIRECTOR,
7 STOCKHOLDER, AGENT OR EMPLOYE OF ANY SUCH LICENSEE SHALL IN ANY
8 WISE BE INTERESTED, EITHER DIRECTLY OR INDIRECTLY, IN THE
9 OWNERSHIP OR LEASEHOLD OF ANY PROPERTY OR THE EQUIPMENT OF ANY
10 PROPERTY OR ANY MORTGAGE LIEN AGAINST THE SAME, USED BY A
11 MANUFACTURER IN MANUFACTURING LIQUOR OR MALT OR BREWED
12 BEVERAGES; NOR SHALL ANY] HOTEL, RESTAURANT OR CLUB LICENSEE, OR
13 ANY OFFICER, DIRECTOR, STOCKHOLDER, AGENT OR EMPLOYE OF ANY SUCH
14 LICENSEE, EITHER DIRECTLY OR INDIRECTLY, LEND ANY MONEYS,
15 CREDIT, OR GIVE ANYTHING OF VALUE OR THE EQUIVALENT THEREOF, TO
16 ANY MANUFACTURER FOR EQUIPPING, FITTING OUT, OR MAINTAINING AND
17 CONDUCTING, EITHER IN WHOLE OR IN PART, AN ESTABLISHMENT USED
18 FOR THE MANUFACTURE OF LIQUOR OR MALT OR BREWED BEVERAGES.
19 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A HOTEL,
20 RESTAURANT OR CLUB LICENSEE, OR ANY OFFICER, DIRECTOR,
21 STOCKHOLDER, AGENT OR EMPLOYE OF ANY SUCH LICENSEE, MAY ACT AS
22 LANDLORD OR LESSOR TO A MANUFACTURER LICENSEE.

23 (E) EXCEPT AS HEREIN PROVIDED, NO HOTEL, RESTAURANT, RETAIL
24 DISPENSER OR CLUB LICENSEE, AND NO OFFICER, DIRECTOR OR
25 STOCKHOLDER, AGENT OR EMPLOYE OF ANY SUCH LICENSEE SHALL IN ANY
26 WISE BE INTERESTED, DIRECTLY OR INDIRECTLY, IN THE OWNERSHIP OR
27 LEASEHOLD OF ANY PROPERTY OR THE EQUIPMENT OF ANY PROPERTY OR
28 ANY MORTGAGE LIEN AGAINST THE SAME, USED BY A DISTRIBUTOR,
29 IMPORTING DISTRIBUTOR, OR BY AN IMPORTER OR SACRAMENTAL WINE
30 LICENSEE, IN THE CONDUCT OF HIS BUSINESS; NOR SHALL ANY HOTEL,

1 RESTAURANT, RETAIL DISPENSER OR CLUB LICENSEE, OR ANY OFFICER,
2 DIRECTOR, STOCKHOLDER, AGENT OR EMPLOYE OF ANY SUCH LICENSEE,
3 EITHER DIRECTLY OR INDIRECTLY, LEND ANY MONEYS, CREDIT, OR GIVE
4 ANYTHING OF VALUE OR THE EQUIVALENT THEREOF, TO ANY DISTRIBUTOR,
5 IMPORTING DISTRIBUTOR, IMPORTER OR SACRAMENTAL WINE LICENSEE,
6 FOR EQUIPPING, FITTING OUT, OR MAINTAINING AND CONDUCTING,
7 EITHER IN WHOLE OR IN PART, AN ESTABLISHMENT USED IN THE CONDUCT
8 OF HIS BUSINESS.

9 THE PURPOSE OF THIS SECTION IS TO REQUIRE A SEPARATION OF THE
10 FINANCIAL AND BUSINESS INTERESTS BETWEEN MANUFACTURERS AND
11 HOLDERS OF HOTEL OR RESTAURANT LIQUOR LICENSES AND, AS HEREIN
12 PROVIDED, OF CLUB LICENSES, ISSUED UNDER THIS ARTICLE, AND NO
13 PERSON SHALL, BY ANY DEVICE WHATSOEVER, DIRECTLY OR INDIRECTLY,
14 EVADE THE PROVISIONS OF THE SECTION. BUT IN VIEW OF EXISTING
15 ECONOMIC CONDITIONS, NOTHING CONTAINED IN THIS SECTION SHALL BE
16 CONSTRUED TO PROHIBIT THE OWNERSHIP OF PROPERTY OR CONFLICTING
17 INTEREST BY A MANUFACTURER OF ANY PLACE OCCUPIED BY A LICENSEE
18 UNDER THIS ARTICLE AFTER THE MANUFACTURER HAS CONTINUOUSLY OWNED
19 AND HAD A CONFLICTING INTEREST IN SUCH PLACE FOR A PERIOD OF AT
20 LEAST FIVE YEARS PRIOR TO JULY EIGHTEENTH, ONE THOUSAND NINE
21 HUNDRED THIRTY-FIVE: PROVIDED, HOWEVER, THAT THIS CLAUSE SHALL
22 NOT PROHIBIT ANY HOTEL, RESTAURANT OR CLUB LIQUOR LICENSEE, OR
23 ANY OFFICER, DIRECTOR OR STOCKHOLDER OF ANY SUCH LICENSEE, FROM
24 OWNING LAND OR BUILDINGS WHICH ARE LEASED TO A HOLDER OF A
25 RETAIL DISPENSER'S LICENSE[, A DISTILLERY LICENSE OR A LIMITED
26 DISTILLERY LICENSE] OR A MANUFACTURER'S LICENSE: AND, PROVIDED
27 FURTHER, THAT NOTHING CONTAINED IN THIS SECTION SHALL BE
28 CONSTRUED TO PROHIBIT ANY HOTEL, RESTAURANT, RETAIL DISPENSER OR
29 CLUB LICENSEE OR ANY OFFICER, DIRECTOR OR STOCKHOLDER, AGENT OR
30 EMPLOYE OF ANY SUCH LICENSEE FROM HAVING A FINANCIAL OR OTHER

1 INTEREST, DIRECTLY OR INDIRECTLY IN THE OWNERSHIP OR LEASEHOLD
2 OF ANY PROPERTY OR THE EQUIPMENT OF ANY PROPERTY OR ANY MORTGAGE
3 LIEN AGAINST SAME, USED, LEASED BY AN IMPORTER OR SACRAMENTAL
4 WINE LICENSEE FOR THE EXCLUSIVE PURPOSE OF MAINTAINING
5 COMMERCIAL OFFICES AND ON THE CONDITION THAT SAID PROPERTY IS
6 NOT USED FOR THE STORAGE OR SALE OF LIQUOR OR MALT OR BREWED
7 BEVERAGES IN ANY QUANTITY: AND, PROVIDED FURTHER, THAT NOTHING
8 CONTAINED IN THIS SECTION SHALL PROHIBIT AN OFFICER OR MEMBER OF
9 A LICENSED PRIVATELY OWNED PRIVATE GOLF COURSE CATERING CLUB
10 FROM HAVING AN INTEREST IN A LIMITED WINERY LICENSE: AND,
11 PROVIDED FURTHER, THAT NOTHING CONTAINED IN THIS SECTION SHALL
12 BE CONSTRUED TO PROHIBIT A MEMBER OF THE GOVERNING BOARD OF A
13 PUBLIC AUTHORITY CREATED UNDER SUBDIVISION (N) OF ARTICLE XXIII
14 OF THE ACT OF AUGUST 9, 1955 (P.L.323, NO.130), KNOWN AS "THE
15 COUNTY CODE," FROM HAVING AN INTEREST IN A DISTRIBUTOR OR
16 IMPORTING DISTRIBUTOR LICENSE NOTWITHSTANDING THE FACT THAT THE
17 PUBLIC AUTHORITY HAS AN INTEREST IN ONE OR MORE RETAIL LICENSES
18 OR ACTS AS A LANDLORD FOR ONE OR MORE RETAIL LICENSES: AND,
19 PROVIDED FURTHER, THAT, NOTHING IN THIS SECTION MAY PROHIBIT AN
20 EMPLOYE OF A HOTEL OR RESTAURANT LICENSEE FROM [HAVING AN
21 INTEREST IN ANY PROPERTY USED BY A LIMITED WINERY LICENSEE OR
22 IN] GUARANTEEING ANY LOANS, OR LENDING ANY MONEYS, PROVIDING
23 CREDIT OR GIVING ANYTHING OF VALUE TO A LIMITED WINERY LICENSEE
24 OR ITS OFFICERS, DIRECTORS AND SHAREHOLDERS, PROVIDED THAT THE
25 PERSON ALSO IS NOT AN OFFICER OF OR DOES NOT HAVE ANY INTEREST
26 IN OR EXERCISE ANY CONTROL OVER ANY OTHER LICENSED ENTITY THAT
27 ENGAGES IN ANY SALES TO OR FROM THE LICENSEE: AND, PROVIDED
28 FURTHER, THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS
29 SECTION, AN ENTITY MAY ACQUIRE BOTH A MANUFACTURER'S LICENSE OR
30 A LIMITED WINERY LICENSE AND A HOTEL, RESTAURANT OR RETAIL

1 DISPENSER LICENSE FOR USE AT THE SAME LOCATION AND MORE THAN ONE
2 LOCATION MAY BE SO LICENSED. AND, PROVIDED FURTHER, THAT,
3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN ENTITY
4 LICENSED AS A LIMITED WINERY MAY HOLD AND OPERATE A RESTAURANT
5 LIQUOR LICENSE AT ONE OF ITS ADDITIONAL, BOARD-APPROVED
6 LOCATIONS INSTEAD OF AT ITS PRIMARY LOCATION WHERE MANUFACTURING
7 OCCURS. THE LICENSES AND A PERSON'S INTEREST IN THE LICENSES OR
8 IN THE ENTITY HOLDING THE LICENSES SHALL NOT BE SUBJECT TO THIS
9 SECTION. PROVIDED FURTHER, THAT, A PERSON WHO IS A HOLDER OF TEN
10 PER CENTUM (10%) OR LESS OF SECURITIES OR OTHER INTERESTS IN A
11 PUBLICLY OR PRIVATELY HELD DOMESTIC OR FOREIGN CORPORATION,
12 PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER FORM OF LEGAL
13 ENTITY OWNING A RETAIL LICENSE SHALL NOT BE DEEMED TO POSSESS A
14 FINANCIAL INTEREST AND IS NOT SUBJECT TO THE PROVISIONS OF THIS
15 SECTION, PROVIDED THAT THE PERSON IS NOT AN OFFICER OF, EMPLOYE
16 OF OR DOES NOT HAVE ANY INTEREST IN OR EXERCISE ANY CONTROL OVER
17 ANY OTHER LICENSED ENTITY THAT ENGAGES IN ANY SALES TO OR FROM
18 THE RETAIL LICENSEE IN WHICH THE PERSON HOLDS THE TEN PER CENTUM
19 (10%) OR LESS INTEREST. PROVIDED FURTHER, THAT NOTHING IN THIS
20 SECTION SHALL PROHIBIT A PERSON WHO HAS AN OWNERSHIP INTEREST IN
21 A LIMITED WINERY LICENSE FROM BEING EMPLOYED BY AN ENTITY THAT
22 HOLDS A HOTEL, RESTAURANT, EATING PLACE OR CLUB LICENSE SO LONG
23 AS THE PERSON IS NOT EMPLOYED AS ALCOHOL SERVICE PERSONNEL OR AS
24 A MANAGER.

25 * * *

26 SECTION 2. SECTION 493(11) OF THE ACT IS AMENDED TO READ:

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

1 OTHERWISE.

2 IT SHALL BE UNLAWFUL--

3 * * *

4 (11) LICENSEES EMPLOYED BY OTHERS. FOR ANY HOTEL, RESTAURANT
5 OR CLUB LIQUOR LICENSEE, OR ANY MALT OR BREWED BEVERAGE
6 LICENSEE, OR ANY OFFICER, SERVANT, AGENT OR EMPLOYE OF SUCH
7 LICENSEE, TO BE AT THE SAME TIME EMPLOYED, DIRECTLY OR
8 INDIRECTLY, BY ANY DISTRIBUTOR, IMPORTING DISTRIBUTOR,
9 MANUFACTURER, IMPORTER OR VENDOR LICENSEE OR ANY OUT OF STATE
10 MANUFACTURER. IT SHALL ALSO BE UNLAWFUL FOR ANY DISTRIBUTOR OR
11 IMPORTING DISTRIBUTOR, OR ANY OFFICER, SERVANT, AGENT OR EMPLOYE
12 OF SUCH LICENSEE, TO BE AT THE SAME TIME EMPLOYED, DIRECTLY OR
13 INDIRECTLY, BY ANY OTHER DISTRIBUTOR, IMPORTING DISTRIBUTOR,
14 MANUFACTURER, IMPORTER, VENDOR, OUT OF STATE MANUFACTURER, HOTEL
15 RESTAURANT, MALT OR BREWED BEVERAGE LICENSEE, OR CLUB LIQUOR
16 LICENSEE. IT SHALL ALSO BE UNLAWFUL FOR ANY MANUFACTURER,
17 IMPORTER, OR VENDOR LICENSEE, OR ANY OUT OF STATE MANUFACTURER,
18 OR ANY OFFICER, SERVANT, AGENT OR EMPLOYE OF SUCH LICENSEE OR
19 MANUFACTURER, TO BE AT THE SAME TIME EMPLOYED, DIRECTLY OR
20 INDIRECTLY, BY ANY HOTEL, RESTAURANT OR CLUB LIQUOR LICENSEE OR
21 ANY MALT OR BREWED BEVERAGE LICENSEE OR ANY DISTRIBUTOR OR
22 IMPORTING DISTRIBUTOR LICENSEE. NOTHING IN THIS SUBSECTION SHALL
23 BE CONSTRUED TO PROHIBIT A MANUFACTURER OR LIMITED WINERY
24 LICENSEE, OR ANY OFFICER, SERVANT, AGENT OR EMPLOYE OF SUCH
25 LICENSEE, TO BE EMPLOYED AT THE SAME TIME BY A HOTEL, RESTAURANT
26 OR RETAIL DISPENSER LICENSEE IF THE HOTEL, RESTAURANT OR RETAIL
27 DISPENSER LICENSEE IS LOCATED AT THE MANUFACTURER OR LIMITED
28 WINERY PREMISES PURSUANT TO SECTION 443. FOR THE PURPOSES OF
29 THIS SUBSECTION, AN OFFICER, SERVANT, AGENT OR EMPLOYE OF A
30 LICENSEE OR MANUFACTURER IS AN INDIVIDUAL WHO HAS EITHER AN

1 OWNERSHIP INTEREST IN THE LICENSEE OR MANUFACTURER OR WHO
2 RECEIVES COMPENSATION FOR HIS OR HER WORK ON BEHALF OF THE
3 LICENSEE OR MANUFACTURER. NOTHING IN THIS SECTION SHALL PROHIBIT
4 A PERSON WHO HAS AN OWNERSHIP INTEREST IN A LIMITED WINERY
5 LICENSE FROM BEING EMPLOYED BY AN ENTITY THAT HOLDS A HOTEL,
6 RESTAURANT, EATING PLACE OR CLUB LICENSE SO LONG AS THE PERSON
7 IS NOT EMPLOYED AS ALCOHOL SERVICE PERSONNEL OR AS A MANAGER.

8 * * *

9 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.