

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1547 Session of
2017

INTRODUCED BY J. HARRIS, JUNE 12, 2017

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JUNE 12, 2017

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; in
18 Pennsylvania Liquor Control Board, further providing for
19 enforcement; in licenses and regulations and liquor, alcohol
20 and malt and brewed beverages, further providing for hearings
21 upon refusal of licenses, renewals or transfers and appeals,
22 providing for declaration of need and further providing for
23 revocation and suspension of licenses and fines and for
24 rights of municipalities preserved; in distilleries,
25 wineries, bonded warehouses, bailees for hire and
26 transporters for hire, further providing for appeals; and, in
27 property illegally possessed or used and forfeitures and
28 nuisances, providing for saturated nuisance market.

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

31 Section 1. The definitions of "eating place" and

1 "restaurant" in section 102 of the act of April 12, 1951
2 (P.L.90, No.21), known as the Liquor Code, are 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 "Eating place" shall mean a premise where food is regularly
8 and customarily prepared and sold, having a total area of not
9 less than three hundred square feet available to the public in
10 one or more rooms, other than living quarters, and equipped with
11 tables and chairs, which must be in place and available for
12 immediate seating of patrons at all times, including bar seats,
13 but not including stacked or stored chairs on the licensed
14 premises, accommodating thirty persons at one time. The board
15 shall, by regulation, set forth what constitutes tables and
16 chairs sufficient to accommodate thirty persons at one time.

17 * * *

18 "Restaurant" shall mean a reputable place operated by
19 responsible persons of good reputation and habitually and
20 principally used for the purpose of providing food for the
21 public, the place to have an area within a building of not less
22 than four hundred square feet, equipped with tables and chairs,
23 which must be in place and available for immediate seating of
24 patrons at all times, including bar seats, but not including
25 stacked or stored chairs on the licensed premises, accommodating
26 at least thirty persons at one time. The board shall, by
27 regulation, set forth what constitutes tables and chairs
28 sufficient to accommodate thirty persons at one time.

29 * * *

30 Section 2. Section 211(a) of the act is amended by adding a

1 paragraph to read:

2 Section 211. Enforcement.--(a) There is created within the
3 Pennsylvania State Police a Bureau of Liquor Control Enforcement
4 which shall be responsible for enforcing this act and any
5 regulations promulgated pursuant thereto. Officers and
6 investigators assigned to the bureau shall have the power and
7 their duty shall be:

8 * * *

9 (8) To investigate on an annual basis, without notice, any
10 licensed premises located in a saturated nuisance market as
11 defined in section 612 and issue citations for any violations of
12 this act discovered upon the investigation.

13 * * *

14 Section 3. Section 464 of the act is amended to read:

15 Section 464. Hearings Upon Refusal of Licenses, Renewals or
16 Transfers; Appeals.--The board may of its own motion, and shall
17 upon the written request of any applicant for club, hotel or
18 restaurant liquor license, or any applicant for any malt or
19 brewed beverage license other than a public service license, or
20 for renewal or transfer thereof, or for the renewal of an
21 amusement permit, whose application for such license, renewal or
22 transfer, or the renewal of an amusement permit, has been
23 refused, fix a time and place for hearing of such application
24 for license or for renewal or transfer thereof, or the renewal
25 of an amusement permit, notice of which hearing shall be mailed
26 to the applicant at the address given in his application. Such
27 hearing shall be before a hearing examiner designated by the
28 board. At such hearing, the board shall present its reasons for
29 its refusal or withholding of license, renewal or transfer
30 thereof, or its refusal for renewal of an amusement permit. The

1 applicant may appear in person or by counsel, may cross-examine
2 the witnesses for the board and may present evidence which shall
3 likewise be subject to cross-examination by the board. Such
4 hearing shall be stenographically recorded. The hearing examiner
5 shall thereafter report, with the examiner's recommendation, to
6 the board in each case. The board shall thereupon grant or
7 refuse the license, renewal or transfer thereof or the renewal
8 of an amusement permit. In considering the renewal of a license
9 or amusement permit, the board shall not refuse any such renewal
10 on the basis of the propriety of the original issuance or any
11 prior renewal of such license or amusement permit. If the board
12 shall refuse such license, renewal or transfer or the renewal of
13 an amusement permit, following such hearing, notice in writing
14 of such refusal shall be mailed to the applicant at the address
15 given in his application. In all such cases, the board shall
16 file of record at least a brief statement in the form of an
17 opinion of the reasons for the ruling or order and furnish a
18 copy thereof to the applicant. Any applicant who has appeared at
19 any hearing, as above provided, who is aggrieved by the refusal
20 of the board to issue any such license or to renew or transfer
21 any such license or to issue or renew any amusement permit may
22 appeal, or any church, hospital, charitable institution, school
23 or public playground located within three hundred feet of the
24 premises applied for, aggrieved by the action of the board in
25 granting the issuance of any such license or the transfer of any
26 such license, may take an appeal limited to the question of such
27 grievance, within [twenty] thirty days from date of refusal or
28 grant, to the [court of common pleas of the county in which the
29 premises or permit applied for is located] Commonwealth Court.
30 If the application is for an economic development license under

1 section 461(b.1) or the intermunicipal transfer of a license,
2 the governing body of the municipality receiving the new license
3 or the transferred license may file an appeal of the board
4 decision granting the license, within [twenty] thirty days of
5 the date of the board's decision. [, to the court of common
6 pleas of the county in which the proposed premises is located.
7 Such appeal shall be upon petition of the aggrieved party, who
8 shall serve a copy thereof upon the board, whereupon a hearing
9 shall be held upon the petition by the court upon ten days'
10 notice to the board. The said appeal shall act as a supersedeas
11 unless upon sufficient cause shown the court shall determine
12 otherwise. The court shall hear the application de novo on
13 questions of fact, administrative discretion and such other
14 matters as are involved, at such time as it shall fix, of which
15 notice shall be given to the board.] The court shall either
16 sustain or over-rule the action of the board and either order or
17 deny the issuance of a new license or the renewal or transfer of
18 the license or the renewal of an amusement permit to the
19 applicant.

20 Section 4. The act is amended by addition a section to read:

21 Section 470.4. Declaration of Need.--(a) A declaration of
22 need may be declared by the governing body of a county that
23 deems itself in need of additional retail liquor licenses above
24 the quota set forth in section 461 and which has exhausted all
25 available licenses under section 470.3.

26 (b) The board shall accept applications on forms and in a
27 manner set forth by the board, and the board shall issue a
28 declaration of need to a county when the county:

29 (1) has exhausted all available licenses under section
30 470.3; and

1 (2) establishes a lack of reasonable means for obtaining a
2 suitable license within the county.

3 (c) Licenses revoked or not renewed under section 612 shall
4 be available for auction under section 470.3 only to counties
5 that are designated as a county of need under this section, in
6 the manner set forth by the board and at the date and time
7 appointed by the board.

8 Section 5. Sections 471(b), 493.1(b) and 515 of the act are
9 amended to read:

10 Section 471. Revocation and Suspension of Licenses; Fines.--

11 * * *

12 (b) Hearing on such citations shall be held in the same
13 manner as provided herein for hearings on applications for
14 license. Upon such hearing, if satisfied that any such violation
15 has occurred or for other sufficient cause, the administrative
16 law judge shall immediately suspend or revoke the license, or
17 impose a fine of not less than fifty dollars (\$50) nor more than
18 one thousand dollars (\$1,000), or both, notifying the licensee
19 by registered letter addressed to his licensed premises. If the
20 licensee has been cited and found to have violated section
21 493(1) insofar as it relates to sales to minors or sales to a
22 visibly intoxicated person, section 493(10) insofar as it
23 relates to lewd, immoral or improper entertainment or section
24 493(14), (16) or (21), or has been found to be a public nuisance
25 pursuant to section 611, or if the owner or operator of the
26 licensed premises or any authorized agent of the owner or
27 operator has been convicted of any violation of the act of April
28 14, 1972 (P.L.233, No.64), known as "The Controlled Substance,
29 Drug, Device and Cosmetic Act," or of 18 Pa.C.S. § 5902
30 (relating to prostitution and related offenses) or 6301

1 (relating to corruption of minors), at or relating to the
2 licensed premises, the administrative law judge shall
3 immediately suspend or revoke the license, or impose a fine of
4 not less than one thousand dollars (\$1,000) nor more than five
5 thousand dollars (\$5,000), or both. However, if a licensee has
6 been cited and found to have violated section 493(1) as it
7 relates to sales to minors or sales to a visibly intoxicated
8 person but at the time of the sale the licensee was in
9 compliance with the requirements set forth in section 471.1 and
10 the licensee had not sold to minors or visibly intoxicated
11 persons in the previous four years, then the administrative law
12 judge shall immediately suspend or revoke the license, or impose
13 a fine of not less than fifty dollars (\$50) nor more than one
14 thousand dollars (\$1,000), or both. The administrative law judge
15 shall notify the licensee by registered mail, addressed to the
16 licensed premises, of such suspension, revocation or fine. In
17 the event the fine is not paid within twenty days of the
18 adjudication, the administrative law judge shall suspend or
19 revoke the license, notifying the licensee by registered mail
20 addressed to the licensed premises. Suspensions and revocations
21 shall not go into effect until thirty days have elapsed from the
22 date of the adjudication during which time the licensee may take
23 an appeal as provided for in this act, except that revocations
24 mandated in section 481(c) shall go into effect immediately. Any
25 licensee whose license is revoked shall be ineligible to have a
26 license under this act until the expiration of three years from
27 the date such license was revoked. In the event a license is
28 revoked, no license shall be granted for the premises or
29 transferred to the premises in which the said license was
30 conducted for a period of at least one year after the date of

1 the revocation of the license conducted in the said premises,
2 except in cases where the licensee or a member of his immediate
3 family is not the owner of the premises, in which case the board
4 may, in its discretion, issue or transfer a license within the
5 said year. In the event the bureau or the person who was fined
6 or whose license was suspended or revoked shall feel aggrieved
7 by the adjudication of the administrative law judge, there shall
8 be a right to appeal to the board. The appeal shall be based
9 solely on the record before the administrative law judge. The
10 board shall only reverse the decision of the administrative law
11 judge if the administrative law judge committed an error of law,
12 abused its discretion or if its decision is not based on
13 substantial evidence. In the event the bureau or the person who
14 was fined or whose license was suspended or revoked shall feel
15 aggrieved by the decision of the board, there shall be a right
16 to appeal to the [court of common pleas] Commonwealth Court in
17 the same manner as herein provided for appeals from refusals to
18 grant licenses. Each of the appeals shall act as a supersedeas
19 unless, upon sufficient cause shown, the reviewing authority
20 shall determine otherwise; however, if the licensee has been
21 cited and found to have violated section 493(1) insofar as it
22 relates to sales to minors or sales to a visibly intoxicated
23 person, section 493(10) insofar as it relates to lewd, immoral
24 or improper entertainment or section 493(14), (16) or (21), or
25 has been found to be a public nuisance pursuant to section 611,
26 or if the owner or operator of the licensed premises or any
27 authorized agent of the owner or operator has been convicted of
28 any violation of "The Controlled Substance, Drug, Device and
29 Cosmetic Act," or of 18 Pa.C.S. § 5902 or 6301, at or relating
30 to the licensed premises, or if the license has been revoked

1 under section 481(c), its appeal shall not act as a supersedeas
2 unless the reviewing authority determines otherwise upon
3 sufficient cause shown. In any hearing on an application for a
4 supersedeas under this section, the reviewing authority may
5 consider, in addition to other relevant evidence, documentary
6 evidence, including records of the bureau, showing the prior
7 history of citations, fines, suspensions or revocations against
8 the licensee; and the reviewing authority may also consider, in
9 addition to other relevant evidence, evidence of any recurrence
10 of the unlawful activity occurring between the date of the
11 citation which is the subject of the appeal and the date of the
12 hearing. If the reviewing authority is the board, no hearing
13 shall be held on the application for a supersedeas; however, a
14 decision shall be made based on the application, answer and
15 documentary evidence under this subsection. If the application
16 for a supersedeas is for a license that has been revoked under
17 section 481(c), the reviewing authority shall grant the
18 supersedeas only if it finds that the licensee will likely
19 prevail on the merits. No penalty provided by this section shall
20 be imposed for any violations provided for in this act unless
21 the bureau notifies the licensee of its nature within thirty
22 days of the completion of the investigation.

23 * * *

24 Section 493.1. Rights of Municipalities Preserved.--* * *

25 (b) A municipality may file a petition with the board for an
26 exemption from section 493(34) of this act for all the licensees
27 within an identifiable area in the municipality. Prior to
28 submitting a petition, the municipality shall adopt a local
29 noise ordinance and a resolution adopted by its governing body
30 confirming support of the petition, citing the noise ordinance

1 and its intention to enforce the ordinance in place of section
2 493(34) of this act. Upon receipt of a petition, including a
3 copy of the noise ordinance, a map of the area to be exempted
4 and resolution, the board shall hold at least one (1) public
5 hearing on the petition. The hearing may be held before a
6 hearing examiner. The hearing shall take place within the
7 identified area and must comply with the notice, recording and
8 public participation requirements of 65 Pa.C.S. Ch. 7 (relating
9 to open meetings). Within sixty (60) days after receipt of the
10 petition, the board shall disapprove the petition for an
11 exemption in its entirety or may approve an area more limited
12 for which the exemption will be granted if the board finds that
13 granting the petition shall have an adverse effect on the
14 welfare, health, peace and morals of the residents living in the
15 vicinity of the identified area; otherwise, the board shall
16 approve the petition. The board may place additional conditions
17 on its approval such as limiting the duration of the approval
18 and any other condition the board deems appropriate. There shall
19 be a right to appeal to the [court of common pleas] Commonwealth
20 Court in the same manner as provided by this act for appeals
21 from refusals to grant licenses.

22 * * *

23 Section 515. Appeals.--The board, the enforcement bureau or
24 any applicant or any licensee aggrieved by any decision
25 refusing, suspending or revoking a license under the provisions
26 of this article may appeal to the [court of the county in which
27 the licensed premises or the premises to be licensed are
28 located. In the event an applicant or a licensee shall have no
29 place of business established within the Commonwealth, his
30 appeal shall be to the] Commonwealth Court. Such appeal shall be

1 in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to
2 judicial review of Commonwealth agency action).

3 Section 6. The act is amended by adding a section to read:

4 Section 612. Saturated Nuisance Market.--(a) The board may,
5 upon its own motion or upon notice by the Bureau of Liquor
6 Control Enforcement or at the written request of a resident of a
7 zip code area, evaluate a zip code area to determine whether or
8 not to designate the area as a saturated nuisance market.

9 (b) Immediately upon motion of the board, notice by the
10 Bureau of Liquor Control Enforcement or receipt of a written
11 request of a resident of a zip code area, the board shall
12 evaluate the zip code area to determine whether or not to
13 designate the area as a saturated nuisance market. The board
14 shall make the determination by evaluating the following
15 factors:

16 (1) The number of licenses that have been subject to
17 objections to renewal, nonrenewal or revocation under this act
18 within the zip code area in the preceding renewal period.

19 (2) The total number of citations issued against all
20 licensees within the zip code area in the preceding renewal
21 period.

22 (3) The total number of police incidents occurring in
23 licensed establishments, or in the areas surrounding licensed
24 establishments, within the zip code area in the preceding
25 renewal period.

26 (4) The total number of conditional licensing agreements
27 entered into within the zip code area.

28 (c) Within thirty (30) days of the motion, notice or written
29 request, the board shall make a determination whether or not to
30 designate a zip code area as a saturated nuisance market.

Written notice of the determination shall be provided to all governing officials and licensees within the zip code area, as well as any resident that filed a written request with the board. The written notice shall set forth the reasoning for the board's determination.

(d) A restaurant or eating place retail licensee located within a saturated nuisance market shall be subject to the following conditions:

(1) A transaction scan device must be used to verify the age of an individual who appears to be under thirty-five (35) years of age before making a sale of liquor. Liquor shall not be sold to anyone under twenty-one (21) years of age or to an individual that is visibly intoxicated. Information from the use of a transaction scan device shall not be sold or shared, except that a licensee may use the data to demonstrate to the enforcement bureau that the licensee is in compliance.

(2) Food preparation is required to take place on the licensed premises. For purposes of this section, "food preparation" shall mean the act of preparing multiple ingredients for human consumption for taste and nutritional value, and shall not include prepackaged food that does not require modification for consumption.

(3) An application under section 404 for a licensed premise located within a saturated nuisance market shall be considered a new license to a new location.

(4) The board shall suspend the operating privileges of a licensee upon notification by the Department of Agriculture or a local health department that the licensee's retail food facility license has been suspended, revoked or invalid. Once verification that a licensee's retail food facility license has

1 been restored, the board shall restore the liquor license
2 operating privileges of the licensee.

3 (5) Within five (5) days of receiving an application for a
4 license under section 404, the board shall notify the local law
5 enforcement agency, State Senator, State Representative and
6 governing body in the affected jurisdiction that an application
7 for transfer has been received. The local law enforcement agency
8 shall have standing in a hearing to present testimony in support
9 of or against the transfer of the license.

10 (e) A licensee that violates this section or any other
11 section of this act or Federal, State or local law shall be
12 subject to citation by the enforcement bureau, which may result
13 in:

14 (1) a fine or suspension or license revocation;

15 (2) nonrenewal of the license;

16 (3) revocation of operating authority; or

17 (4) another penalty authorized under sections 471 and 494.

18 (f) A restaurant or eating place retail licensee located in
19 a saturated nuisance market that has been cited and found to be
20 in violation of this act or Federal, State or local law shall be
21 subject to the following:

22 (1) For a first offense, a fine of not less than two hundred
23 and fifty dollars (\$250), nor more than one thousand dollars
24 (\$1,000).

25 (2) For a second offense, a fine of not less than two
26 thousand dollars (\$2,000), nor more than five thousand dollars
27 (\$5,000), and suspension of operating privileges for at least
28 seven (7) days.

29 (3) For a third or subsequent offense, a fine of not less
30 than five thousand dollars (\$5,000), nor more than ten thousand

1 dollars (\$10,000), and license revocation under section 471.

2 (g) Within sixty days after the completion of two full
3 renewal periods, the board shall reevaluate a saturated nuisance
4 market based on the factors set forth under subsection (b) to
5 determine whether or not to continue the zip code area's
6 designation as a saturated nuisance market. After conducting the
7 evaluation, the board shall provide written notice of the
8 board's determination to all governing officials and licensees
9 within a zip code area. The written notice shall set forth the
10 reasoning for the board's determination.

11 (h) As used in this section, the term "zip code area" means
12 the geographic area covered by a postal zip code.

13 Section 7. This act shall take effect in 30 days.