

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1833 Session of
2009

INTRODUCED BY HARHAI, BARRAR, BRENNAN, BUXTON, CALTAGIRONE,
CLYMER, D. COSTA, DALLY, GROVE, GRUCELA, HALUSKA, HANNA,
HARKINS, KOTIK, KULA, MARSHALL, MATZIE, MELIO, PALLONE,
PASHINSKI, READSHAW, SEIP, K. SMITH, SOLOBAY, STABACK,
SWANGER AND YUDICHAK, JULY 7, 2009

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JULY 7, 2009

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 issuance, transfer or extension of
18 hotel, restaurant and club liquor licenses, for sale of malt
19 or brewed beverages by liquor licensees, for malt and brewed
20 beverages manufacturers', distributors' and importing
21 distributors' licenses and for malt and brewed beverages
22 retail licenses.

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

25 Section 1. Section 404 of the act of April 12, 1951 (P.L.90,
26 No.21), known as the Liquor Code, reenacted and amended June 29,

1 1987 (P.L.32, No.14) and amended January 6, 2006 (P.L.1, No.1),
2 is amended to read:

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

1 or other licensed premises shall not be applicable to license
2 applications submitted for public venues or performing arts
3 facilities: And provided further, That the board shall refuse
4 any application for a new license, the transfer of any license
5 to a new location or the extension of an existing license to
6 cover an additional area if, in the board's opinion, such new
7 license, transfer or extension would be detrimental to the
8 welfare, health, peace and morals of the inhabitants of the
9 neighborhood within a radius of five hundred feet of the place
10 proposed to be licensed: And provided further, That the board
11 shall have the discretion to refuse a license to any person or
12 to any corporation, partnership or association if such person,
13 or any officer or director of such corporation, or any member or
14 partner of such partnership or association shall have been
15 convicted or found guilty of a felony within a period of five
16 years immediately preceding the date of application for the said
17 license. The board shall refuse any application for a new
18 license, the transfer of any license to a new location or the
19 extension of any license to cover an additional area where the
20 sale of liquid fuels or oil is conducted[.], it being the
21 legislative intent of this provision that no alcoholic beverages
22 may be sold from the same location as liquid fuels or oils. The
23 board may enter into an agreement with the applicant concerning
24 additional restrictions on the license in question. If the board
25 and the applicant enter into such an agreement, such agreement
26 shall be binding on the applicant. Failure by the applicant to
27 adhere to the agreement will be sufficient cause to form the
28 basis for a citation under section 471 and for the nonrenewal of
29 the license under section 470. If the board enters into an
30 agreement with an applicant concerning additional restrictions,

1 those restrictions shall be binding on subsequent holders of the
2 license until the license is transferred to a new location or
3 until the board enters into a subsequent agreement removing
4 those restrictions. If the application in question involves a
5 location previously licensed by the board, then any restrictions
6 imposed by the board on the previous license at that location
7 shall be binding on the applicant unless the board enters into a
8 new agreement rescinding those restrictions. The board may, in
9 its discretion, refuse an application for an economic
10 development license under section 461(b.1) or an application for
11 an intermunicipal transfer of a license if the board receives a
12 protest from the governing body of the receiving municipality.
13 The receiving municipality of an intermunicipal transfer or an
14 economic development license under section 461(b.1) may file a
15 protest against the transfer of a license into its municipality,
16 and the receiving municipality shall have standing in a hearing
17 to present testimony in support of or against the issuance or
18 transfer of a license. Upon any opening in any quota, an
19 application for a new license shall only be filed with the board
20 for a period of six months following said opening.

21 Section 2. Section 407 of the act is amended by adding a
22 subsection to read:

23 Section 407. Sale of Malt or Brewed Beverages by Liquor
24 Licensees.--* * *

25 (c) A restaurant or hotel licensee who is otherwise
26 permitted to sell malt or brewed beverages for consumption off
27 the licensed premises shall not do so if its licensed premises
28 has an inside passage or connection to or with another business
29 or is operated in conjunction with another business occupying
30 one thousand square feet or more. The existing licensed premises

of a restaurant or hotel licensee that has an inside passage or connection to or with another business or is operated in conjunction with another business occupying one thousand square feet or more as of the effective date of this subsection shall not be subject to this restriction, but the board shall refuse any application for a new restaurant or hotel license or the transfer of any restaurant or hotel license to a new location with an inside passage or connection to or with another business or that is operated in conjunction with another business occupying one thousand square feet or more.

Section 3. Section 431(b) of the act, amended December 8, 2004 (P.L.1810, No.239), is amended to read:

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

(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

1 license or the transfer of any license to a new location, the
2 board may, in its discretion, grant or refuse such new license
3 or transfer if such place proposed to be licensed is within
4 three hundred feet of any church, hospital, charitable
5 institution, school or public playground, or if such new license
6 or transfer is applied for a place which is within two hundred
7 feet of any other premises which is licensed by the board: And
8 provided further, That the board shall refuse any application
9 for a new license or the transfer of any license to a new
10 location if, in the board's opinion, such new license or
11 transfer would be detrimental to the welfare, health, peace and
12 morals of the inhabitants of the neighborhood within a radius of
13 five hundred feet of the place proposed to be licensed. The
14 board shall refuse any application for a new license or the
15 transfer of any license to a location where the sale of liquid
16 fuels or oil is conducted[.], it being the legislative intent of
17 this provision that no alcoholic beverages may be sold from the
18 same location as liquid fuels or oils. The board may enter into
19 an agreement with the applicant concerning additional
20 restrictions on the license in question. If the board and the
21 applicant enter into such an agreement, such agreement shall be
22 binding on the applicant. Failure by the applicant to adhere to
23 the agreement will be sufficient cause to form the basis for a
24 citation under section 471 and for the nonrenewal of the license
25 under section 470. If the board enters into an agreement with an
26 applicant concerning additional restrictions, those restrictions
27 shall be binding on subsequent holders of the license until the
28 license is transferred to a new location or until the board
29 enters into a subsequent agreement removing those restrictions.
30 If the application in question involves a location previously

1 licensed by the board, then any restrictions imposed by the
2 board on the previous license at that location shall be binding
3 on the applicant unless the board enters into a new agreement
4 rescinding those restrictions. The board shall require notice to
5 be posted on the property or premises upon which the licensee or
6 proposed licensee will engage in sales of malt or brewed
7 beverages. This notice shall be similar to the notice required
8 of hotel, restaurant and club liquor licensees.

9 Except as hereinafter provided, such license shall authorize
10 the holder thereof to sell or deliver malt or brewed beverages
11 in quantities above specified anywhere within the Commonwealth
12 of Pennsylvania, which, in the case of distributors, have been
13 purchased only from persons licensed under this act as
14 manufacturers or importing distributors, and in the case of
15 importing distributors, have been purchased from manufacturers
16 or persons outside this Commonwealth engaged in the legal sale
17 of malt or brewed beverages or from manufacturers or importing
18 distributors licensed under this article. In the case of an
19 importing distributor, the holder of such a license shall be
20 authorized to store and repackage malt or brewed beverages owned
21 by a manufacturer at a segregated portion of a warehouse or
22 other storage facility authorized by section 441(d) and operated
23 by the importing distributor within its appointed territory and
24 deliver such beverages to another importing distributor who has
25 been granted distribution rights by the manufacturer as provided
26 herein. The importing distributor shall be permitted to receive
27 a fee from the manufacturer for any related storage, repackaging
28 or delivery services. In the case of a bailee for hire hired by
29 a manufacturer, the holder of such a permit shall be authorized:
30 to receive, store and repackage malt or brewed beverages

1 produced by that manufacturer for sale by that manufacturer to
2 importing distributors to whom that manufacturer has given
3 distribution rights pursuant to this subsection or to purchasers
4 outside this Commonwealth for delivery outside this
5 Commonwealth; or to ship to that manufacturer's storage
6 facilities outside this Commonwealth. The bailee for hire shall
7 be permitted to receive a fee from the manufacturer for any
8 related storage, repackaging or delivery services. The bailee
9 for hire shall, as required in Article V of this act, keep
10 complete and accurate records of all transactions, inventory,
11 receipts and shipments and make all records and the licensed
12 areas available for inspection by the board and for the
13 Pennsylvania State Police, Bureau of Liquor Control Enforcement,
14 during normal business hours.

15 Each out of State manufacturer of malt or brewed beverages
16 whose products are sold and delivered in this Commonwealth shall
17 give distributing rights for such products in designated
18 geographical areas to specific importing distributors, and such
19 importing distributor shall not sell or deliver malt or brewed
20 beverages manufactured by the out of State manufacturer to any
21 person issued a license under the provisions of this act whose
22 licensed premises are not located within the geographical area
23 for which he has been given distributing rights by such
24 manufacturer. Should a licensee accept the delivery of such malt
25 or brewed beverages in violation of this section, said licensee
26 shall be subject to a suspension of his license for at least
27 thirty days: Provided, That the importing distributor holding
28 such distributing rights for such product shall not sell or
29 deliver the same to another importing distributor without first
30 having entered into a written agreement with the said secondary

1 importing distributor setting forth the terms and conditions
2 under which such products are to be resold within the territory
3 granted to the primary importing distributor by the
4 manufacturer.

5 When a Pennsylvania manufacturer of malt or brewed beverages
6 licensed under this article names or constitutes a distributor
7 or importing distributor as the primary or original supplier of
8 his product, he shall also designate the specific geographical
9 area for which the said distributor or importing distributor is
10 given distributing rights, and such distributor or importing
11 distributor shall not sell or deliver the products of such
12 manufacturer to any person issued a license under the provisions
13 of this act whose licensed premises are not located within the
14 geographical area for which distributing rights have been given
15 to the distributor and importing distributor by the said
16 manufacturer: Provided, That the importing distributor holding
17 such distributing rights for such product shall not sell or
18 deliver the same to another importing distributor without first
19 having entered into a written agreement with the said secondary
20 importing distributor setting forth the terms and conditions
21 under which such products are to be resold within the territory
22 granted to the primary importing distributor by the
23 manufacturer. Nothing herein contained shall be construed to
24 prevent any manufacturer from authorizing the importing
25 distributor holding the distributing rights for a designated
26 geographical area from selling the products of such manufacturer
27 to another importing distributor also holding distributing
28 rights from the same manufacturer for another geographical area,
29 providing such authority be contained in writing and a copy
30 thereof be given to each of the importing distributors so

1 affected.

2 * * *

3 Section 4. Section 432(d) of the act, amended January 6,
4 2006 (P.L.1, No.1), is amended and the section is amended by
5 adding a subsection to read:

6 Section 432. Malt and Brewed Beverages Retail Licenses.--* *
7 *

8 (d) The board shall, in its discretion, grant or refuse any
9 new license, the transfer of any license to a new location or
10 the extension of an existing license to cover an additional area
11 if such place proposed to be licensed is within three hundred
12 feet of any church, hospital, charitable institution, school, or
13 public playground, or if such new license, transfer or extension
14 is applied for a place which is within two hundred feet of any
15 other premises which is licensed by the board. The board shall
16 refuse any application for a new license, the transfer of any
17 license to a new location or the extension of an existing
18 license to cover an additional area if, in the board's opinion,
19 such new license, transfer or extension would be detrimental to
20 the welfare, health, peace and morals of the inhabitants of the
21 neighborhood within a radius of five hundred feet of the place
22 to be licensed. The board may enter into an agreement with the
23 applicant concerning additional restrictions on the license in
24 question. If the board and the applicant enter into such an
25 agreement, such agreement shall be binding on the applicant.
26 Failure by the applicant to adhere to the agreement will be
27 sufficient cause to form the basis for a citation under section
28 471 and for the nonrenewal of the license under section 470. If
29 the board enters into an agreement with an applicant concerning
30 additional restrictions, those restrictions shall be binding on

1 subsequent holders of the license until the license is
2 transferred to a new location or until the board enters into a
3 subsequent agreement removing those restrictions. If the
4 application in question involves a location previously licensed
5 by the board, then any restrictions imposed by the board on the
6 previous license at that location shall be binding on the
7 applicant unless the board enters into a new agreement
8 rescinding those restrictions. The board shall refuse any
9 application for a new license, the transfer of any license to a
10 location where the sale of liquid fuels or oil is conducted or
11 the extension of an existing license to cover an additional
12 area[:], it being the legislative intent of this provision that
13 no alcoholic beverages may be sold from the same location as
14 liquid fuels or oils: And provided further, That the board shall
15 have the discretion to refuse a license to any person or to any
16 corporation, partnership or association if such person, or any
17 officer or director of such corporation, or any member or
18 partner of such partnership or association shall have been
19 convicted or found guilty of a felony within a period of five
20 years immediately preceding the date of application for the said
21 license. The board may, in its discretion, refuse an application
22 for an economic development license under section 461(b.1) or an
23 application for an intermunicipal transfer or a license if the
24 board receives a protest from the governing body of the
25 receiving municipality. The receiving municipality of an
26 intermunicipal transfer or an economic development license under
27 section 461(b.1) may file a protest against the approval for
28 issuance of a license for economic development or an
29 intermunicipal transfer of a license into its municipality, and
30 such municipality shall have standing in a hearing to present

1 testimony in support of or against the issuance or transfer of a
2 license. Upon any opening in any quota, an application for a new
3 license shall only be filed with the board for a period of six
4 months following said opening.

5 (d.1) An eating place retail dispenser licensee who is
6 otherwise permitted to sell malt or brewed beverages for
7 consumption off the licensed premises shall not do so if its
8 licensed premises has an inside passage or connection to or with
9 another business or is operated in conjunction with another
10 business occupying one thousand square feet or more. The
11 existing licensed premises of an eating place retail dispenser
12 licensee that has an inside passage or connection to or with
13 another business or is operated in conjunction with another
14 business occupying one thousand square feet or more as of the
15 effective date of this subsection shall not be subject to this
16 restriction, but the board shall refuse any application for a
17 new eating place retail dispenser license or the transfer of any
18 eating place retail dispenser license to a new location with an
19 inside passage or connection to or with another business or that
20 is operated in conjunction with another business occupying one
21 thousand square feet or more.

22 * * *

23 Section 5. This act shall take effect in 60 days.