

LIQUOR CODE - OMNIBUS AMENDMENTS
Act of Jul. 17, 2003, P.L. 63, No. 15
Session of 2003
No. 2003-15

Cl. 47

HB 782

AN ACT

Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as reenacted, "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," further providing for definitions, for enforcement, for marketing, for sales by Pennsylvania Liquor Stores, for sales by liquor licensees and restrictions, for retail dispenser's restrictions on purchases and sales, for unlawful acts relative to liquor, alcohol and liquor licensees, for unlawful acts relative to liquor, malt and brewed beverages and licensees, for rights of municipalities preserved and for limited wineries.

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

Section 1. The definitions of "eligible entity" and "public venue" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and amended June 29, 1987 (P.L.32, No.14) and amended or added February 21, 2002 (P.L.103, No.10) and December 9, 2002 (P.L.1653, No.212), are amended to read:

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

* * *

"Eligible entity" shall mean a city of the third class, a hospital, a church, a synagogue, a volunteer fire company, a volunteer ambulance company, a volunteer rescue squad, a unit of a nationally chartered club which has been issued a club liquor license, **a club in a city of the third class which has been issued a club liquor license and which, as of December 31, 2002, has been in existence for at least 100 years**, a library, a nationally accredited Pennsylvania nonprofit zoological institution licensed by the United States Department of Agriculture, a nonprofit agricultural association in existence for at least ten years, a bona fide sportsmen's club in existence for at least ten years, a nationally chartered veterans' organization and any affiliated lodge or subdivision of such organization, a fraternal benefit society that is

licensed to do business in this Commonwealth and any affiliated lodge or subdivision of such fraternal benefit society, a museum operated by a nonprofit corporation in a city of the third class or township of the first class, a nonprofit corporation engaged in the performing arts in a city of the third class or in an incorporated town, an arts council, a nonprofit corporation that operates an arts facility or museum in a city of the third class in the county of the fourth class, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to protect the architectural heritage of boroughs and which has been recognized as such by a municipal resolution, or a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) conducting a regatta in a city of the second class with the permit to be used on State park grounds or conducting a family-oriented celebration as part of Welcome America in a city of the first class on property leased from that city for more than fifty years.

* * *

"Public venue" shall mean a stadium, arena, convention center, museum, amphitheater or similar structure. If the public venue is a cruise terminal owned or leased by a port authority created under the act of June 12, 1931 (P.L.575, No.200), entitled "An act providing for joint action by Pennsylvania and New Jersey in the development of the ports on the lower Delaware River, and the improvement of the facilities for transportation across the river; authorizing the Governor, for these purposes, to enter into an agreement with New Jersey; creating The Delaware River Joint Commission and specifying the powers and duties thereof, including the power to finance projects by the issuance of revenue bonds; transferring to the new commission all the powers of the Delaware River Bridge Joint Commission; and making an appropriation," it shall have no permanent seating requirement. If the public venue is an open-air amphitheater owned by a port authority created under the act of December 6, 1972 (P.L.1392, No.298), known as the "Third Class City Port Authority Act," it shall have no permanent seating requirement. If the public venue is owned by a political subdivision, a municipal authority, the Commonwealth, an authority created under the act of July 29, 1953 (P.L.1034, No.270), known as the "Public Auditorium Authorities Law," an authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," an art museum established under the authority of the act of April 6, 1791 (3 Sm.L.20, No.1536), entitled "An act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law," or an authority created under Article XXIII (n) or (o) of the act of August 9, 1955 (P.L.323, No.130), known as "The County Code," it shall have permanent seating for at least one thousand (1,000) people; otherwise, it shall have permanent seating for at least three thousand (3,000) people. The term shall also mean any regional history center, multipurpose cultural and science facility or museum, regardless of owner and seating capacity, that has a floor area of at least sixty thousand (60,000) square feet in one building. **The term shall also mean a convention or conference center owned by a city of the third class, regardless of seating capacity, that has a floor area of at least fifteen thousand (15,000) square feet in one building.**

* * *

Section 2. Sections 211 and 215 of the act are amended by adding subsections to read:

Section 211. Enforcement.--* * *

(f) In addition to the information provided to the General Assembly and the Legislative Data Processing Center under sections 613 and 614 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," respectively, the Pennsylvania State Police shall provide to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives any other information as requested. The Pennsylvania State Police shall also provide:

(1) a copy of the most recently completed audit of expenditures of the enforcement bureau; and

(2) a report detailing the demographic characteristics of the bureau's complement of civilian officers. Such report shall include information relating to workplace diversity as contained in section two of the Governor's Annual Workforce Report relating to equal employment.

Section 215. Wine Marketing.--* * *

(e) The board is authorized to participate in or sponsor wine events for the purpose of educating consumers as to the wines available in this Commonwealth. The wine to be used for the event may be acquired through the State store system or may be donated from outside this Commonwealth. Participation in the tastings may be conditioned on the purchase of a ticket to the event. The event may include events occurring on premises licensed by the board, and the board may sell wine for off-premises consumption in an area designated by the board for such sale.

Section 3. Section 305(d) and (h) of the act, amended December 9, 2002 (P.L.1653, No.212) and May 8, 2003 (P.L.1, No.1), are amended to read:

Section 305. Sales by Pennsylvania Liquor Stores.--* * *

(d) No liquor or alcohol package shall be opened on the premises of a Pennsylvania Liquor Store. No manager or other employe of the board employed in a Pennsylvania Liquor Store shall allow any liquor or alcohol to be consumed on the store premises, nor shall any person consume any liquor or alcohol on such premises, except liquor and alcohol which is part of a tasting conducted pursuant to the board's regulations. **Such tastings may also be conducted in the board's headquarters or regional offices.**

* * *

(h) Every Pennsylvania Liquor Store shall sell gift certificates which may be redeemed for liquor. In addition, the board may sell corkscrews, wine **and liquor** accessories, trade publications and wine sleeves at Pennsylvania Liquor Stores.

Section 4. Section 406(a)(1) of the act, amended December 9, 2002 (P.L.1653, No.212), is amended to read:

Section 406. Sales by Liquor Licensees; Restrictions.--(a)

(1) Every hotel, restaurant or club liquor licensee may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel or restaurant habitually used for the serving of food to guests or patrons, or in a bowling alley that is immediately adjacent to and under the same roof as a restaurant [when no minors are present, unless minors who are present are under proper supervision as defined in section 493, in the bowling alley], and in the case of hotels, to guests, and in the case of clubs, to members, in their private rooms

in the hotel or club. No club licensee nor its officers, servants, agents or employes, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club. The holder of a restaurant license located in a hotel may sell liquor or malt or brewed beverages for consumption in that part of the restaurant habitually used for the serving of meals to patrons and also to guests in private guest rooms in the hotel. For the purpose of this paragraph, any person who is an active member of another club which is chartered by the same state or national organization shall have the same rights and privileges as members of the particular club. For the purpose of this paragraph, any person who is an active member of any volunteer firefighting company, association or group of this Commonwealth, whether incorporated or unincorporated, shall upon the approval of any club composed of volunteer firemen licensed under this act, have the same social rights and privileges as members of such licensed club. For the purposes of this paragraph, the term "active member" shall not include a social member. Any club licensee which is either an incorporated unit of a national veterans' organization or an affiliated organization as defined in section 461.1 shall be permitted to sell liquor or malt or brewed beverages to any active member of another unit which is chartered by the same national veterans' organization or to any member of a nationally chartered auxiliary associated with the same national veterans' organization.

* * *

Section 5. Section 440 of the act, amended May 31, 1996 (P.L.312, No.49), is amended to read:

Section 440. Sales by Manufacturers of Malt or Brewed Beverages; Minimum Quantities.--No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold, nor sell or deliver any such malt or brewed beverages in other than original containers approved as to capacity by the board, nor in quantities of less than a case or original containers containing [one hundred twenty-eight] **sixty-four** ounces or more which may be sold separately; nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.

Section 6. Sections 442(b) and 491(6) of the act are amended to read:

Section 442. Retail Dispensers' Restrictions on Purchases and Sales.--* * *

(b) No retail dispenser shall sell any malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a retail dispenser from selling malt or brewed beverages in a hotel or club house in any room of such hotel or club house occupied by a bona fide registered guest or member entitled to purchase the same or to prohibit a retail dispenser from selling malt or brewed beverages in a bowling alley [when no minors are present, unless minors who are present are under proper supervision as defined in section 493,] where the licensed premises and bowling alley are immediately adjacent and under the same roof.

* * *

Section 491. Unlawful Acts Relative to Liquor, Alcohol and Liquor Licensees.--

It shall be unlawful--

* * *

(6) Sales by Restaurant and Hotel Liquor Licensees. For any restaurant or hotel licensee, his servants, agents or employes, to sell any liquor or malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a restaurant liquor licensee from providing private affairs the primary function of which is for catering only to weddings or special occasions arranged twenty-four hours in advance, nor to prohibit a hotel licensee, or a restaurant licensee when the restaurant is located in a hotel, from selling liquor or malt or brewed beverages in any room of such hotel occupied by a bona fide guest or to prohibit a restaurant licensee from selling liquor or malt or brewed beverages in a bowling alley [when no minors are present] where the restaurant and bowling alley are immediately adjacent and under the same roof.

* * *

Section 7. Section 493 of the act is amended by adding a clause to read:

Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.--The term "licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful--

* * *

(29) Furnishing Free Liquor or Malt or Brewed Beverages. For any licensee that has obtained a license to conduct thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission pursuant to the act of December 17, 1981 (P.L.435, No.135), known as the "Race Horse Industry Reform Act," and that has obtained a slot machine license, or any employe, servant or agent of such licensee, to give away free of charge or below cost any liquor or malt or brewed beverage as a customary practice.

Section 8. Section 493.1(b) of the act, amended December 9, 2002 (P.L.1653, No.212), is amended and the section is amended by adding a subsection to read:

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

(b) A municipality may file [an application] **a petition** with the board [to consider] **for** an exemption from the board's regulations regarding amplified music being heard off the licensed premises for all the licensees within an identifiable area in the municipality [with a concentrated number of licensees]. Prior to submitting [an application] **a petition**, the municipality shall adopt a local noise ordinance and a resolution adopted by its governing body confirming support of the [application] **petition**, citing the noise ordinance and [their] **its** intention to enforce the ordinance in place of the board's regulations. Upon receipt of [an application] **a petition**, including a copy of the noise ordinance, **a map of the area to be exempted** and resolution, the board shall hold at least one **(1)** public hearing on the [application] **petition**. The hearing may be held before a hearing examiner. The hearing shall take place within the identified area and must comply with **[all] the notice, recording and public participation** requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings). Within sixty **(60)** days after receipt of the [application] **petition**, the board shall[, in its discretion, approve or disapprove the

application] **disapprove the petition** for an exemption in its entirety or may approve an area more limited for which the exemption will be granted[.] **if the board finds that granting the petition shall have an adverse effect on the welfare, health, peace and morals of the residents living in the vicinity of the identified area; otherwise, the board shall approve the petition. The board may place additional conditions on its approval such as limiting the duration of the approval and any other condition the board deems appropriate.** There shall be a right to appeal to the court of common pleas in the same manner as provided by this act for appeals from refusals to grant licenses.

(c) **A municipality may rescind any existing exemption from the board's regulations regarding amplified music by notifying the board of its intent to do so in writing, fifteen (15) days prior to the rescission date. Such notice must be accompanied by an ordinance or resolution authorizing the rescission. A rescission of an existing exemption which does not rescind the entire exempted area shall be treated as a new petition for exemption with the board and shall follow the procedures set forth in subsection (b).**

Section 9. Section 505.2(4) of the act, amended November 10, 1999 (P.L.514, No.47), is amended to read:

Section 505.2. Limited Wineries.--In the interest of promoting tourism and recreational development in Pennsylvania, holders of a limited winery license may:

* * *

(4) At the discretion of the board, obtain a special permit to participate in alcoholic cider, wine and food expositions off the licensed premises. A special permit shall be issued upon proper application and payment of a fee of thirty dollars (\$30) per day for each day of permitted use, not to exceed five (5) consecutive days. The total number of days for all the special permits may not exceed [twenty (20)] **forty (40)** days in any calendar year. A special permit shall entitle the holder to engage in the sale of alcoholic cider or wine produced by the bottle or in case lots by the permittee under the authority of a limited winery license. Holders of special permits may provide tasting samples of wines in individual portions not to exceed one fluid ounce. Samples at alcoholic cider, wine and food expositions may be sold or offered free of charge. Except as provided herein, limited wineries utilizing special permits shall be governed by all applicable provisions of this act as well as by all applicable regulations or conditions adopted by the board.

For the purposes of this clause, "alcoholic cider, wine and food expositions" are defined as affairs held indoors or outdoors with the primary intent of educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders and wines in conjunction with suitable food displays, demonstrations and sales. Alcoholic cider, wine and food expositions may also include activities other than alcoholic cider, wine and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and similar activities.

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Section 10. This act shall take effect as follows:

(1) The addition of section 211(f) of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 17th day of July, A. D. 2003.

EDWARD G. RENDELL