

LIQUOR CODE - LIMITING NUMBER OF RETAIL LICENSES TO BE ISSUED
IN EACH COUNTY AND LICENSES NOT ASSIGNABLE AND TRANSFERS

Act of Jul. 2, 2019, P.L. 371, No. 57

Cl. 47

Session of 2019

No. 2019-57

HB 1524

AN ACT

Amending the act of April 12, 1951 (P.L.90, No.21), entitled "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," in preliminary provisions, further providing for definitions; and, in licenses and regulations, liquor, alcohol and malt and brewed beverages, further providing for limiting number of retail licenses to be issued in each county and for licenses not assignable and transfers.

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

Section 1. Section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, is amended by adding definitions 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:

* * *

"Saturated county" shall mean a county with more than one restaurant liquor license per three thousand (3,000) inhabitants in the top twenty-five highest ratios of restaurant liquor licenses to county population in this Commonwealth.

* * *

"Tourist development project" shall mean a planned development situated on at least ninety (90) acres of land, constructed since January 1, 2019, that is dedicated primarily to tourism with at least five hundred thousand (500,000) square feet of actual or proposed development, with a mix of entertainment and retail uses.

* * *

Section 2. Section 461(a) and (b.4)(4) of the act are amended and the section is amended by adding a subsection to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each County.--(a) No additional restaurant, eating place retail dispenser or club licenses shall be issued within a county if the total number of restaurant and eating place retail

dispenser licenses is greater than one license for each three thousand inhabitants in the county, except the board may issue licenses to public venues, performing arts facilities, continuing care retirement communities, airport restaurants, municipal golf courses, hotels, privately-owned private golf courses, privately-owned public golf courses, racetracks, automobile racetracks, nonprimary pari-mutuel wagering locations, privately-owned ski resorts and to any other entity which this act specifically exempts from the limitations provided in this section, and the board may issue a license to a club situated in a borough having a population less than eight thousand inhabitants which is located in a county of the second class A whose application is filed on or before February 28, 2001. In addition, the board may issue an eating place retail dispenser license for on-premises sales only to the owner or operator of a facility having a minimum of a one-half mile asphalt track and having a permanent seating capacity of at least six thousand people used principally for holding automobile races, regardless of the number of restaurant and eating place retail dispenser licenses already issued in that county. When determining the number of restaurant and eating place retail dispenser licenses issued in a county for the purposes of this section, licenses exempted from this limitation, **licenses subject to the mixed-use town development project provisions of this act, licenses subject to the tourist development project provisions of this act** and club licenses shall not be considered. Inhabitants of dry municipalities shall be considered when determining the population in a county. Licenses shall not be issued or transferred into municipalities where such licenses are prohibited pursuant to local referendum in accordance with section 472. Licenses approved for intermunicipal transfer may not be transferred from the receiving municipality for a period of five years after the date that the licensed premises are operational in the receiving municipality.

* * *

(b.4) * * *

(4) The board may approve licensure of exterior serving areas for premises to be located within a mixed-use town center development project **or tourist development project** where such exterior serving areas are situated on municipal-owned or private-owned property, regardless of whether such exterior serving areas are located immediately adjacent, abutting or contiguous to the building to be licensed, provided that the employes of licensees in a qualified mixed-use town center development project **or tourist development project** may traverse unlicensed areas in order to deliver alcohol to patrons who are seated in any such licensed serving area that is not immediate, adjacent, abutting and contiguous to the licensee's primary licensed premises; and provided further that any such licensed serving area is delineated from all adjacent public areas by a railing, barrier or other partition for the purpose of table service only; and provided further that the entirety of such noncontiguous licensed exterior serving area or areas is not located more than thirty-five feet from the nearest point of the licensed structure; and provided further that such noncontiguous licensed exterior serving areas shall not include any additional enclosed structure with four walls and a roof other than the primary licensed building; and provided further that any and all public thoroughfare or thoroughfares situated between the licensed building and the noncontiguous exterior licensed serving area is or are used primarily for pedestrian

foot traffic and not vehicular traffic; and provided further that the local municipality has approved, by ordinance or resolution, the use of such areas by the applicant; and provided further that, in the case of municipal-owned property, a sidewalk cafe or similar permit, as applicable, is first obtained by the applicant; and provided further that the applicant complies with any regulation issued by the board pursuant hereto or in furtherance hereof. Any restaurant ("R"), eating place ("E") or hotel ("H") license transferred to or issued for premises located within a mixed-use town center development **or tourist development project** shall have the privileges of this subsection so long as such license remains within the mixed-use town center development **or tourist development project**.

* * *

(b.5) (1) Notwithstanding any other provision of this act to the contrary, the board may approve the transfer of a restaurant liquor license available for auction under section 470.3 for the purpose of economic development through increased tourism, subject to the conditions of this subsection.

(2) A tourist development project restaurant liquor license application may be submitted by any interested party at any time. The application to the board shall be accompanied by a resolution or ordinance indicating that the municipality has approved the request to have the area designated as a tourist development project by the board, a map of the area proposed to be designated and any additional information the board may require. The application fee shall be one million dollars (\$1,000,000).

(3) The proposed location must be within a tourist development project as the term is defined in section 102 and within a municipality that allows for the issuance and transfer of restaurant liquor licenses under section 472.

(4) A tourist development project restaurant liquor license application must indicate the number of restaurant liquor licenses that the applicant is seeking, but the applicant may not seek more than seventy-five licenses for the tourist development project. The applicant must submit a surcharge of sixty-five thousand dollars (\$65,000) for each restaurant liquor license upon board approval of the transfer of the applicable restaurant liquor license.

(5) On receiving a tourist development project restaurant license application as well as any additional documents and fees, and following satisfaction that the applicant's request meets all board requirements, the board shall approve the application request and place the surcharge under clause (4) into The State Stores Fund. The restaurant liquor license shall then be held in safekeeping for the benefit of the applicant until the applicant or the applicant's assignee files a formal transfer application. The applicant may assignee the rights to file a formal transfer application to a third party.

(6) The board may choose which specific restaurant liquor licenses will be made available for transfer but shall choose licenses from a saturated county, if they are available, up to the maximum number of licenses that can be accepted from that saturated county. For purposes of this subsection, the maximum number of licenses that can be accepted from a county shall be calculated by subtracting from the total number of restaurant liquor licenses in the county, a number equal to 2.64 times the county population divided by three thousand.

(7) A license held in safekeeping under clause (5) may remain in safekeeping for up to four years without having to

pay the additional safekeeping fees in section 474.1. The restaurant liquor license shall be subject to all other fees such as renewal fees and the application surcharge under section 470. After the four-year period, measured from the date the board approves the application request for making the license available for transfer, the license shall be revoked unless the applicant has submitted a transfer application prior to that date. If a license is revoked, the applicant may not receive any refund. A license revoked under this clause shall be reassigned to the county in which the license was located before the license was transferred under this subsection and be available for auction under section 470.3.

(8) A restaurant liquor license transferred under this subsection may not be transferred to a location outside of the designated tourist development project.

(9) A license transferred under this subsection is ineligible for a wine expanded permit under section 415. A licensee under this subsection may not sell malt and brewed beverages for off-premises consumption except patrons may take wine, spirits and malt and brewed beverages off the licensed premises if the wine, spirits and malt and brewed beverages remain in the area previously designated as a tourist development project.

(10) A license transferred into a new county under this subsection may not be counted toward or subject to the county quota under subsection (a).

(11) The renewal and validation dates of a license transferred into a new county under this subsection shall be amended to match the renewal and validation date of the licenses in the county.

* * *

Section 3. Section 468(a)(1) of the act is amended to read:

Section 468. Licenses Not Assignable; Transfers.--(a) (1)

Licenses issued under this article may not be assigned. The board, upon payment of the transfer filing fee, is hereby authorized to transfer any license issued by it under the provisions of this article from one person to another or from one place to another, or both. Except for restaurant liquor and eating place retail dispenser licenses transferred under section 461(b.4) **and restaurant liquor licenses transferred under section 461(b.5)**, if the license is a retail license, the new location must be within the same county as the existing location or, if the municipality is located in more than one county, within the same municipality as the existing location.

* * *

Section 4. This act shall take effect in 60 days.

APPROVED--The 2nd day of July, A.D. 2019.

TOM WOLF