

LIQUOR CODE - PREPARED BEVERAGES AND MIXED DRINKS FOR
OFF-PREMISES CONSUMPTION DURING DISASTER EMERGENCY AND LOCAL
OPTION

Act of May 21, 2020, P.L. 149, No. 21
Session of 2020
No. 2020-21

Cl. 47

HB 327

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, providing for prepared beverages and mixed drinks for off-premises consumption during disaster emergency and reenacting provisions relating to local option.

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:

* * *

"Prepared beverage and mixed drink" shall mean a sealed container of no less than four fluid ounces and no greater than sixty-four fluid ounces in a single transaction that holds spirits and mixers that are combined on a licensed premises.

* * *

"Sealed container" shall mean a packaged container with a secure lid or cap designed to prevent consumption without removal of the lid or cap. A lid with sipping holes or opening for straws must be covered or affixed with an additional seal before sale.

* * *

Section 2. The act is amended by adding a section to read:

Section 417. Prepared Beverages and Mixed Drinks for Off-Premises Consumption During Disaster Emergency.--(a) The following shall apply:

(1) Notwithstanding any provision of this act, a person holding and possessing a valid restaurant or hotel liquor license that lost more than twenty-five per centum (25%) of the

person's average monthly total sales, including alcohol sales, as a result of restrictions imposed during the COVID-19 disaster emergency, may sell prepared beverages and mixed drinks for off-premises consumption where meals prepared for pickup or curbside pickup are also available.

(2) Except as provided in this paragraph and paragraph (4), nothing in this section shall affect the ability of a licensee to operate within the scope of its current license as authorized by this act, provided, however, that no sales of prepared beverages and mixed drinks for off-premises consumption shall take place after eleven o'clock postmeridian of any day until the licensee's permitted hours of operation under section 406 of the next day, including Sundays if the licensee has a permit authorized under sections 406(a)(3) and 432(f).

(3) The following licensees are prohibited from selling prepared beverages and mixed drinks for off-premises consumption under this section:

(i) A licensee whose underlying license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1), until the matter is decided.

(ii) A licensee whose underlying license has been suspended under section 1799.6-E of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

(4) For purposes of selling prepared beverages and mixed drinks for off-premises consumption, a licensed premises shall not be subject to section 493(14).

(5) Within sixty (60) days of the effective date of this section, a licensee selling prepared beverages and mixed drinks for off-premises consumption shall begin utilizing a transaction scan device to verify the age of an individual who appears to be under thirty-five (35) years of age before making a sale of prepared beverages and mixed drinks for off-premises consumption. A licensee may not sell or share consumers' personal data from the use of a transaction scan device, provided that the licensee may share the data with the enforcement bureau of the board as evidence that the licensee is in compliance with this paragraph.

(6) A licensee selling prepared beverages or mixed drinks for off-premises consumption shall prominently post a warning sign in a manner that puts consumers on notice of the restrictions on alcoholic beverages under 75 Pa.C.S. § 3809 (relating to restriction on alcoholic beverages), and that the prepared beverages and mixed drinks packaged for sale by the licensee are open containers and may only be transported by the driver of a motor vehicle in the vehicle's trunk or in some other area of the vehicle that is not occupied by the driver or passengers.

(b) Notwithstanding any other provision of this section or provision of law to the contrary, a licensee selling prepared beverages and mixed drinks for off-premises consumption may only do so during the COVID-19 disaster emergency and during the mitigation period after the termination of the disaster emergency in which a licensee is operating at less than sixty per centum (60%) capacity.

(c) A licensee may sell liquor to another licensee qualified to sell prepared beverages and mixed drinks under this section. The licensee shall notify the board in writing advising it of the name of the licensee and identifying any product sold to that licensee, as well as the description of the liquor, including brand names, sizes and numbers of containers sold to another licensee. The sales may only occur during the COVID-19

disaster emergency and during the mitigation period after the termination of the disaster emergency in which a licensee is operating at less than sixty per centum (60%) capacity.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"COVID-19 disaster emergency" shall mean the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency.

"Licensee" shall mean a person holding and possessing a valid restaurant or hotel liquor license authorized to sell prepared beverages or mixed drinks for off-premise consumption under subsection (a)(1).

"Transaction scan device" shall mean a device capable of deciphering, in an electronically readable format, the information encoded on the magnetic strip, chip or bar code of an identification card under section 495(a).

Section 3. Section 472(a) of the act, amended July 2, 2019 (P.L.341, No.48), is reenacted to read:

Section 472. Local Option.--(a) In any municipality or any part of a municipality where such municipality is split so that each part thereof is separated by another municipality, an election may be held, subject to subsection (c), not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to hotels, restaurants, resort facilities and clubs, not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to public venues, to performing arts facilities, to continuing care retirement communities, to hotels located on property owned by an accredited college or university, to privately-owned private golf courses or to privately-owned public golf courses, not oftener than once in four years, to determine the will of the electors with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years, to determine the will of the electors with respect to granting of licenses to wholesale distributors and importing distributors, not more than once in two years, to determine the will of the electors with respect to the granting of club liquor licenses or club retail dispenser licenses to incorporated units of national veterans' organizations, not oftener than once in two years to determine the will of the electors with respect to the granting of special occasion permits to qualified organizations, not more than once in four years, to determine the will of the electors with respect to the establishment, operation and maintenance by the board of Pennsylvania liquor stores, within the limits of such municipality or part of a split municipality, or not more than once in two years, to determine the will of the electors with respect to the granting of liquor licenses to ski resort facilities, under the provisions of this act: Provided, That an election on the question of establishing and operating a State liquor store shall be initiated only in those municipalities, or that part of a split municipality that shall have voted against the granting of liquor licenses; and that an election on the question of granting wholesale distributor and importing distributor licenses shall be initiated only in those municipalities or parts of split municipalities that shall have at a previous election voted against the granting of dispenser's licenses. Except for a municipality or part of a split municipality located in a county of the second class A,

whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in the municipality or part of a split municipality at the last preceding general election shall file a petition with the county board of elections of the county for a referendum on the question of granting any of said classes of licenses or the establishment of Pennsylvania liquor stores, the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at any election. In a county of the second class A, whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in a municipality or part of a split municipality at the last preceding general election, or whenever five hundred electors of a municipality or part of a split municipality, whichever is less, sign a petition for a referendum on the question of granting any of the said classes of licenses or the establishment of Pennsylvania liquor stores and file the petition with the county board of elections, the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at any election. Separate petitions must be filed for each question to be voted on. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions, insofar as such provisions are applicable.

When the question is in respect to the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for the sale of liquor in..... Yes of.....? No

When the question is in respect to the granting of liquor licenses to resort facilities in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to resort facilities for the sale of liquor in the..... Yes of.....? No

When the question is in respect to the granting of liquor licenses to ski resorts in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to ski resort facilities for the sale of liquor in theOf.....? No

When the question is in respect to the granting of restaurant liquor licenses for use at public venues in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to public venues for the sale of liquor in the..... Yes of.....? No

When the question is in respect to the granting of restaurant liquor licenses for use at performing arts facilities in those municipalities that do not already allow the retail sale of alcohol, it shall be in the following form:

Do you favor the granting of liquor licenses to performing arts facilities for the sale of liquor in the..... Yes of.....? No

When the question is in respect to the granting of liquor licenses for hotels located on property owned by an accredited college or university in those municipalities that do not

already allow the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses to hotels on property owned by an accredited college or university in the..... Yes of.....? No

When the question is in respect to the granting of liquor licenses, for privately-owned private golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for privately-owned private golf courses for the sale of liquor in.....by..... Yes of.....? No

When the question is in respect to the granting of liquor licenses, for privately-owned public golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for privately-owned public golf courses for the sale of liquor in.....by..... Yes of.....? No

When the question is in respect to the granting of liquor licenses to continuing care retirement communities in those municipalities that have not already approved the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for continuing care retirement communities in.....by..... Yes of.....? No

When the question is in respect to the granting of licenses to retail dispensers of malt and brewed beverages, it shall be in the following form:

Do you favor the granting of malt and brewed beverage retail dispenser licenses for consumption on premises where sold in the..... Yes of.....? No

When the question is in respect to the granting of licenses to wholesale distributors of malt or brewed beverages and importing distributors, it shall be in the following form:

Do you favor the granting of malt and brewed beverage wholesale distributor's and importing distributor's licenses not for consumption on premises where sold in the..... Yes of.....? No

When the question is in respect to the granting of club liquor licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club liquor licenses to incorporated units of national veterans' organizations in the..... Yes of.....? No

When the question is in respect to the granting of club retail dispenser licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club retail dispenser licenses to incorporated units of national veterans' organizations in the..... Yes of.....? No

When the question is in respect to the granting of special occasion permits allowing the sale of liquor by qualified organizations in municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of liquor by qualified organizations in the..... Yes of.....? No

When the question is in respect to the granting of special occasion permits allowing the sale of malt or brewed beverages only by qualified organizations in municipalities that do not already allow the retail sale of malt or brewed beverages, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of malt or brewed beverages only by qualified organizations in the..... Yes of.....? No

When the question is in respect to the establishment, operation and maintenance of Pennsylvania liquor stores it shall be in the following form:

Do you favor the establishment, operation and maintenance of Pennsylvania liquor stores in the..... Yes of.....? No

When the question is in respect to the granting of liquor licenses to an airport authority in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to an airport authority for the sale of liquor in the..... Yes of.....? No

When the question is in respect to the granting of brewery licenses, it shall be in the following form:

Do you favor the granting of brewery licenses for the sale of malt or brewed beverages by the case, by the keg and by the glass for consumption on premises, plus the sale of wine and spirits by the glass for consumption on premises, in..... Yes by.....? No

When the question is in respect to the granting of brewery storage licenses, it shall be in the following form:

Do you favor the granting of brewery storage licenses for the sale of malt or brewed beverages by the case, by the keg and by the glass for consumption on premises, plus the sale of wine and spirits by the glass for consumption on premises, in..... Yes by.....? No

When the question is in respect to the granting of limited distillery licenses, it shall be in the following form:

Do you favor the granting of limited distillery licenses for the sale of spirits by the bottle to go and by the glass for consumption on premises, plus the sale of wine and malt or brewed beverages for consumption on premises, in..... Yes by.....? No

When the question is in respect to the granting of additional licenses for board-approved limited distillery locations, it shall be in the following form:

Do you favor the granting of additional licenses for board-approved limited distillery locations for the sale of spirits by the bottle to go and by the glass for consumption on premises, plus the sale of wine and malt or brewed beverages for consumption on premises, in..... Yes

by.....? No
When the question is in respect to the granting of limited winery licenses, it shall be in the following form:
Do you favor the granting of limited winery licenses for the sale of wine by the bottle to go and by the glass for consumption on premises, plus the sale of spirits and malt or brewed beverages for consumption on premises,
in..... Yes
by.....? No

When the question is in respect to the granting of additional licenses for board-approved limited winery locations, it shall be in the following form:
Do you favor the granting of additional licenses for board-approved limited winery locations for the sale of wine by the bottle to go and by the glass for consumption on premises, plus the sale of spirits and malt or brewed beverages for consumption on premises,
in..... Yes
by.....? No

In case of a tie vote, the status quo shall obtain. If a majority of the voting electors on any such question vote "yes," then liquor licenses shall be granted by the board to hotels, restaurants, ski resorts, resort facilities and clubs, or liquor licenses shall be granted by the board to public venues, to performing arts facilities, to continuing care retirement communities, to hotels located on property owned by an accredited college or university, to privately-owned private golf courses or to privately-owned public golf courses, or malt and brewed beverage retail dispenser licenses or wholesale distributor's and importing distributor's license for the sale of malt or brewed beverages shall be granted by the board, or club liquor licenses or club retail dispenser licenses shall be granted by the board to incorporated units of national veterans' organizations, or special occasion permits may be issued to qualified organizations, or the board may establish, operate and maintain Pennsylvania liquor stores, as the case may be, in such municipality or part of a split municipality, as provided by this act; but if a majority of the electors voting on any such question vote "no," then the board shall have no power to grant or to renew upon their expiration any licenses of the class so voted upon in such municipality or part of a split municipality; or if the negative vote is on the question in respect to the establishment, operation and maintenance of Pennsylvania liquor stores, the board shall not open and operate a Pennsylvania liquor store in such municipality or part of a split municipality, nor continue to operate a then existing Pennsylvania liquor store in the municipality or part of a split municipality for more than two years thereafter or after the expiration of the term of the lease on the premises occupied by such store, whichever period is less, unless and until at a later election a majority of the voting electors vote "yes" on such question.

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Section 4. This act shall take effect immediately.

APPROVED--The 21st day of May, A.D. 2020.

TOM WOLF