

LIQUOR CODE - OMNIBUS AMENDMENTS
Act of Oct. 5, 1994, P.L. 537, No. 80
Session of 1994
No. 1994-80

Cl. 47

HB 553

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," extending enforcement powers of liquor control enforcement officers; and further providing for local options and for unlawful acts.

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

Section 1. Sections 211 and 472 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), are amended to read:

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

(1) To investigate whenever there are reasonable grounds to believe liquor, alcohol or malt or brewed beverages are being sold on premises not licensed under the provisions of this act. If the investigation produces evidence of the unlawful sale of liquor or malt or brewed beverages or any other violation of the provisions of this act, the officer involved in the investigation shall institute criminal proceedings against the person or persons believed to have been criminally liable, as otherwise provided by law or rule of court.

[(2) To arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale, importation, manufacture or transportation or having unlawful possession of liquor, alcohol or malt or brewed beverages contrary to the provisions of this act or any other law of this Commonwealth.]

(2) To arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale, importation, manufacture or transportation or having unlawful possession of liquor, alcohol or malt or brewed beverages contrary to the provisions of this act or any other law of this Commonwealth or any person whom the officer/investigator, while in the performance

of his assigned duties under and pursuant to this act and any regulations promulgated under this act, observes to be in violation of any of the following provisions:

- 18 Pa.C.S. § 3302 (relating to causing or risking catastrophe).
- 18 Pa.C.S. § 3304 (relating to criminal mischief).
- 18 Pa.C.S. § 4101 (relating to forgery).
- 18 Pa.C.S. § 5503 (relating to disorderly conduct).
- 18 Pa.C.S. § 5505 (relating to public drunkenness).
- 18 Pa.C.S. § 5512 (relating to lotteries, etc.).
- 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).
- 18 Pa.C.S. § 5514 (relating to pool selling and bookmaking).
- 18 Pa.C.S. § 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages).
- 18 Pa.C.S. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).
- 18 Pa.C.S. § 6309 (relating to representing that minor is of age).
- 18 Pa.C.S. § 6310.1 (relating to selling or furnishing liquor or malt or brewed beverages to minors).
- 18 Pa.C.S. § 6310.3 (relating to carrying a false identification card).

(3) Upon reasonable and probable cause, to search for and to seize, without warrant or process, except in private homes, any liquor, alcohol or malt or brewed beverages unlawfully possessed, manufactured, sold, imported or transported and any stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them, which are or have been used in the unlawful manufacture, sale, importation or transportation of the same. Such liquor, alcohol, malt or brewed beverages, stills, equipment, materials, utensils, vehicles, boats, vessels, animals or aircraft so seized shall be disposed of as hereinafter provided.

(4) To investigate and issue citations for any violations of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or any regulations of the board adopted pursuant to such laws or any violation of any laws of this Commonwealth or of the Federal Government, relating to the payment of taxes on liquor, alcohol or malt or brewed beverages by any licensee, his officers, servants, agents or employees.

(5) To arrest any person who engages in the following offenses when the said offenses are committed against the officer/investigator or any person accompanying and assisting the officer/investigator while the said officer/investigator is performing assigned duties under and pursuant to this act and any regulations promulgated under this act:

- 18 Pa.C.S. § 2701 (relating to simple assault).
- 18 Pa.C.S. § 2702 (relating to aggravated assault).
- 18 Pa.C.S. § 2705 (relating to recklessly endangering another person).
- 18 Pa.C.S. § 2706 (relating to terroristic threats).
- 18 Pa.C.S. § 2709 (relating to harassment and stalking).
- 18 Pa.C.S. § 5104 (relating to resisting arrest or other law enforcement).
- 18 Pa.C.S. § 5501 (relating to riot).

(6) To serve and execute warrants issued by the proper authorities for offenses referred to in this subsection and to serve subpoenas.

(7) To arrange for the administration of chemical tests of breath, blood or urine, including preliminary breath tests, to persons for the purpose of determining the alcoholic content of blood or the presence of a controlled substance by qualified personnel of a State or local police department or qualified personnel of a clinical laboratory licensed and approved by the Department of Health.

(b) Any equipment or appurtenance actually used in the commission of the unlawful acts may be confiscated. The confiscation shall not, in any manner, divest or impair the rights or interest of any bona fide lienholder in the equipment or appurtenance.

(c) The Pennsylvania State Police Commissioner shall assign State Police Officers to such supervisory and other capacities in the enforcement bureau as he deems necessary. All other personnel of the enforcement bureau shall be civilians.

(d) The Office of Chief Counsel for the Pennsylvania State Police shall represent the enforcement bureau in all enforcement proceedings brought before the Office of Administrative Law Judge or any other adjudicatory body.

(e) Nothing in this act shall be construed to change the status of civilian enforcement agents for the purposes of the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employe Relations Act," or cause civilian enforcement agents to be considered policemen for the purposes of the act of June 24, 1968 (P.L.237, No.111), referred to as the Policemen and Firemen Collective Bargaining Act.

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)**, on the date of the primary election immediately preceding any municipal election, but 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 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 privately-owned private 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**, or 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, under the provisions of this act: Provided, however, Where an election shall have been held at the primary preceding a municipal election in any year, another election may be held under the provisions of this act at the primary occurring the fourth year after such prior election: And provided further, 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. 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 the primary immediately preceding the municipal 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, 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 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 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

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 and clubs, or liquor licenses shall be granted by the board to privately-owned private 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 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.

(b) To be eligible for the local option under this section, the incorporated unit of a national veterans' organization must have been incorporated on or before a date ten years prior to the filing of its application after authorization under local option. In each municipality, licenses approved under the local option for incorporated units of national veterans' organizations may not exceed four.

(c) For the first year that the local option is authorized for the incorporated units of national veterans' organizations, the local option election for the incorporated units of national veterans' organizations may be held at the primary election preceding any election.

Section 2. Section 493(7) of the act is amended 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--

* * *

(7) **Alcoholic Strength on Label of Malt or Brewed Beverages.** For any licensee, or his servants, agents or employes, to transport, sell, deliver or purchase any malt or brewed beverages upon which there shall appear a label or other informative data which [in any manner] refers to the alcoholic contents of the malt or brewed beverage[, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such malt or brewed beverage was produced.] **in any terms other than as a percentage of alcohol by volume. This clause shall be construed to permit, but not to require, a manufacturer to designate upon the label or descriptive data the alcoholic content of malt or brewed beverages in percentage of alcohol by volume.** This clause shall not be construed to prohibit a manufacturer from designating upon the label or descriptive data the alcoholic content of malt or brewed beverages intended for shipment into another state or territory, when the laws of such state or territory require that the alcoholic content of the malt or brewed beverage must be stated upon the package.

* * *

Section 3. This act shall take effect as follows:

(1) The amendment of section 493(7) of the act shall take effect immediately.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

ROBERT P. CASEY