

LIQUOR CODE - OMNIBUS AMENDMENTS
Act of Jan. 6, 2006, P.L. 1, No. 1

Cl. 47

Session of 2006
No. 2006-1

HB 111

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 defining "eligible entity"; providing for extension of existing license to cover additional area; and further providing for breweries, for surrender of certain licenses for benefit of licensee, for unlawful acts relative to malt or brewed beverages and licensees, for hours of operation relative to manufacturers, importing distributors and distributors and for unlawful acts relative to liquor, malt and brewed beverages and licensees.

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

Section 1. The definition of "eligible entity" 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 December 30, 2003 (P.L.423, No.59), is 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, **borough** 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, 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, [or] **a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)) whose purpose is to raise funds for the research and treatment of cystic fibrosis**, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) whose purpose is to educate the public on issues dealing with watershed conservation[.], **a nonprofit economic development agency in a city of the second class with the primary function to serve as an economic generator for the greater southwestern Pennsylvania region by attracting and supporting film, television and related media industry projects and coordinating government and business offices in support of a production or a junior league in a third class county that is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)) that is comprised of women whose purpose is exclusively educational and charitable in promoting the volunteerism of women and developing and participating in community projects and that has been in existence for over seventy years.**

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Section 2. Sections 404, 406.1 and 432(d) of the act, amended December 9, 2002 (P.L.1653, No.212), are amended to read:

Section 404. Issuance, **Transfer or Extension** of Hotel, Restaurant and Club Liquor Licenses.--Upon receipt of the application and the proper fees, and upon being satisfied of the truth of the statements in the application that the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person will be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter permitted, and that the applicant is a person of good repute, that the premises applied for meet all the requirements of this act and the regulations of the board, that the applicant seeks a license for a hotel, restaurant or club, as defined in this act, and that the issuance of such license is not prohibited by any of the provisions of this act, the board shall, in the case of a hotel or restaurant, grant and issue to the applicant a liquor license, and in the case of a club may, in its discretion, issue or refuse a license: Provided, however, That in the case of any new license or the transfer of any license to a new location **or the extension of an existing license to cover an additional area** the board may,

in its discretion, grant or refuse such new license [or], transfer **or extension** if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license [or], transfer **or extension** is applied for a place which is within two hundred feet of any other premises which is licensed by the board: And provided further, That the board's authority to refuse to grant a license because of its proximity to a church, hospital, charitable institution, public playground or other licensed premises shall not be applicable to license applications submitted for public venues or performing arts facilities: And provided further, That the board shall refuse any application for a new license [or], the transfer of any license to a new location **or the extension of an existing license to cover an additional area** if, in the board's opinion, such new license [or], transfer **or extension** would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed: And provided further, That 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. The board shall refuse any application for a new license [or], the transfer of any license to a **new location or the extension of any license to cover an additional area** where the sale of liquid fuels or oil is conducted. The board may enter into an agreement with the applicant concerning additional restrictions on the license in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant. Failure by the applicant to adhere to the agreement will be sufficient cause to form the basis for a citation under section 471 and for the nonrenewal of the license under section 470. If the board enters into an agreement with an applicant concerning additional restrictions, those restrictions shall be binding on subsequent holders of the license until the license is transferred to a new location or until the board enters into a subsequent agreement removing those restrictions. If the application in question involves a location previously licensed by the board, then any restrictions imposed by the board on the previous license at that location shall be binding on the applicant unless the board enters into a new agreement rescinding those restrictions. The board may, in its discretion, refuse an application for an economic development license under section 461(b.1) or an application for an intermunicipal transfer of a license if the board receives a protest from the governing body of the receiving municipality. The receiving municipality of an intermunicipal transfer or an economic development license under section 461(b.1) may file a protest against the transfer of a license into its municipality, and the receiving municipality shall have standing in a hearing to present testimony in support of or against the issuance or transfer of a license. Upon any opening in any quota, an application for a new license shall only be filed with the board for a period of six months following said opening.

Section 406.1. Secondary Service Area.--(a) Upon application of any restaurant, hotel, club, municipal golf course liquor licensee or manufacturer of malt or brewed beverages, and payment of the appropriate fee, the board may

approve a secondary service area by extending the licensed premises to include one additional permanent structure with dimensions of at least one hundred seventy-five square feet, enclosed on three sides and having adequate seating. Such secondary service area must be located on property having a minimum area of one (1) acre, and must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare; however, the original licensed premises and the secondary service area must be located on the same tract of land. **The board shall have discretion to refuse the application for a secondary service area in the same manner it has discretion to refuse an application for transfer of the license to a new location as set forth in section 404.** There shall be no requirement that the secondary service area be physically connected to the original licensed premises. In addition, there shall be no requirement that the secondary service area be located in the same municipality as the original licensed premises, provided, however, that the board shall not approve a secondary service area in this case if that secondary service area is located in any municipality where the granting of liquor licenses has been prohibited as provided in this article. Notwithstanding 40 Pa. Code § [7.21(c)(3)] **7.21**, the licensee shall be permitted to store, serve, sell or dispense food, liquor and malt or brewed beverages at the board approved secondary service area.

(b) If the applicant is a manufacturer of malt or brewed beverages, the board may approve a secondary service area for use as a brewery pub pursuant to section 446, notwithstanding any intervening public thoroughfare, so long as the proposed secondary service area is within one thousand feet of the licensed premises. Notwithstanding any other provision of this act, the licensed premises and the secondary service area may be located on different tracts of lands.

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

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(d) The board shall, in its discretion, grant or refuse any new license [or], the transfer of any license to a new location **or the extension of an existing license to cover an additional area** if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license [or], transfer **or extension** is applied for a place which is within two hundred feet of any other premises which is licensed by the board. The board shall refuse any application for a new license [or], the transfer of any license to a new location **or the extension of an existing license to cover an additional area** if, in the board's opinion, such new license [or], transfer **or extension** would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place to be licensed. The board may enter into an agreement with the applicant concerning additional restrictions on the license in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant. Failure by the applicant to adhere to the agreement will be sufficient cause to form the basis for a citation under section 471 and for the nonrenewal of the license under section 470. If the board enters into an agreement with an applicant concerning additional restrictions, those restrictions shall be binding on subsequent holders of the license until the license is transferred to a new location or until the board enters into a subsequent agreement removing those restrictions. If the application in question involves a

location previously licensed by the board, then any restrictions imposed by the board on the previous license at that location shall be binding on the applicant unless the board enters into a new agreement rescinding those restrictions. The board shall refuse any application for a new license [or], the transfer of any license to a location where the sale of liquid fuels or oil is conducted **or the extension of an existing license to cover an additional area:** And provided further, That 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. The board may, in its discretion, refuse an application for an economic development license under section 461(b.1) or an application for an intermunicipal transfer or a license if the board receives a protest from the governing body of the receiving municipality. The receiving municipality of an intermunicipal transfer or an economic development license under section 461(b.1) may file a protest against the approval for issuance of a license for economic development or an intermunicipal transfer of a license into its municipality, and such municipality shall have standing in a hearing to present testimony in support of or against the issuance or transfer of a license. Upon any opening in any quota, an application for a new license shall only be filed with the board for a period of six months following said opening.

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Section 3. Section 446(2) of the act, amended November 10, 1999 (P.L.514, No.47), is amended to read:

Section 446. Breweries.--Holders of a brewery license may:

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(2) Operate a restaurant or brewery pub on the licensed premises under such conditions and regulations as the board may enforce: Provided, however, That sales on Sunday may be made irrespective of the volume of food sales if the licensed premises are at a [stadium or arena] **public venue** location. The holder of a brewery license may sell at its brewery pub premises Pennsylvania wines it has purchased from either the holder of a Pennsylvania limited winery license or from the board: Provided, however, That said wines must be consumed at the licensed brewery pub premises.

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Section 4. Section 474.1 of the act, added December 9, 2002 (P.L.1653, No.212), is amended to read:

Section 474.1. Surrender of Restaurant, Eating Place Retail Dispenser, Hotel, Importing Distributor and Distributor License for Benefit of Licensee.--(a) A restaurant, eating place retail dispenser, hotel, importing distributor and distributor licensee whose licensed establishment is not in operation for fifteen consecutive days shall return its license for safekeeping with the board no later than at the expiration of the fifteen-day period. The license may only be reissued from safekeeping in the manner set forth by the board through regulation.

(b) The board may hold the license in safekeeping for a period not to exceed three consecutive years. Any license remaining in safekeeping for more than three consecutive years shall be immediately revoked by the Bureau of Licensing unless a transfer application or request for reissue from safekeeping has been filed prior to the expiration of the three-year period. The board shall extend the period for an additional year if,

at the end of the three-year period, the licensed premises are unavailable due to fire, flood or other similar natural disaster.

(c) In the event a transfer application filed prior to the expiration of the three-year period is disapproved by the board through its exercise of discretion, then the license may remain in safekeeping for an additional period of three consecutive months after the board's decision to refuse the transfer application. Failure to remove the license from safekeeping or to file another transfer application prior to the expiration of the three-month period of time shall result in revocation of the license.

(d) Any period of time in which the licensee allows the license to lapse by not filing a timely license renewal or license validation shall be considered time in which the license was held in safekeeping for purposes of this section.

(e) A license placed in safekeeping prior to the effective date of this act will be deemed to have been placed in safekeeping on the effective date of this act for purposes of this section.

(f) Notwithstanding any other provision of this section, no license shall be revoked under the provisions of this section prior to February 7, 2007.

Section 5. Sections 492(4) and 492.1 of the act, amended or added July 6, 2005 (P.L.135, No.39), are amended to read:

Section 492. Unlawful Acts Relative to Malt or Brewed Beverages and Licensees.--

It shall be unlawful--

* * *

[(4) Activities of Manufacturers, Importing Distributors or Distributors on Sunday. For any manufacturer of malt or brewed beverages, importing distributor or distributor, or the servants, agents or employes of the same, to sell malt or brewed beverages between the hours of eleven o'clock postmeridian of any Saturday and eight o'clock in the forenoon of the following Monday, except that a distributor or importing distributor may sell malt or brewed beverages on Sunday between the hours of twelve o'clock noon and five o'clock postmeridian. Upon purchase of a permit from the board at an annual fee of one hundred dollars (\$100), manufacturers, importing distributors and distributors, or the servants, agents or employes of the same, may sell malt or brewed beverages to anyone not licensed under this act or to a holder of a special occasion permit on Sunday between the hours of noon and five o'clock postmeridian. Notwithstanding any other provision of this section, delivery or receiving of malt or brewed beverages shall be permissible on Sunday after prior arrangement as follows:

(i) A manufacturer may deliver to any importing distributor or distributor to which the manufacturer has granted wholesale distribution rights for the manufacturer's product.

(ii) An importing distributor or distributor may deliver to any organization to which a special occasion permit has been issued between the hours of nine o'clock antemeridian and twelve o'clock noon.

(iii) An importing distributor or distributor may deliver to anyone not licensed under this act between the hours of nine o'clock antemeridian and twelve o'clock noon.

The term "prior arrangement" shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two hundred fifty dollars (\$250) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery.]

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Section 492.1. Hours of Operation Relative to Manufacturers, Importing Distributors and Distributors.--(a) Manufacturers may sell **or deliver** malt or brewed beverages between two o'clock antemeridian of any Monday and twelve o'clock midnight of the following Saturday. [Notwithstanding this section, manufacturers operating a brewery pub under section 446 shall be subject to the hours of operation set forth by the board through regulation.]

(b) (1) Importing distributors and distributors may sell **or deliver** malt or brewed beverages between two o'clock antemeridian of any Monday and twelve o'clock midnight of the following Saturday to holders of a liquor or malt and brewed beverage license or permit issued by the board.

(2) Importing distributors and distributors may sell **or deliver** malt or brewed beverages between eight o'clock antemeridian and eleven o'clock postmeridian of any day, except Sunday, to persons not licensed or permitted by this act.

(c) In addition to the hours authorized under subsections (a) and (b), manufacturers, importing distributors and distributors, upon purchasing a permit from the board at an annual fee of one hundred dollars (\$100), may sell malt or brewed beverages to persons not licensed under this act or to a holder of a special occasion permit on Sunday between the hours of noon and five o'clock postmeridian.

(d) In addition to the hours authorized under subsections (a) and (b), delivery or receiving of malt or brewed beverages shall be permissible on Sunday after prior arrangement in accordance with the following:

(1) A manufacturer may, at any time, deliver to any importing distributor or distributor to which the manufacturer has granted wholesale distribution rights for the manufacturer's product.

(2) An importing distributor or distributor may deliver to any organization to which a special occasion permit has been issued between the hours of nine o'clock antemeridian and twelve o'clock noon.

(3) An importing distributor or distributor may deliver to persons not licensed under this act between the hours of nine o'clock antemeridian and twelve o'clock noon.

(e) Notwithstanding any provision of this section to the contrary, a brewery pub operating under section 446 shall be subject to the hours of operation set forth by the board through regulation.

(f) The term "prior arrangement" shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two hundred fifty dollars (\$250) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery.

Section 6. Section 493(13), (24) and (31) of the act, amended or added December 16, 2002 (P.L.1806, No.221), November 30, 2004 (P.L.1727, No.221) and July 6, 2005 (P.L.135, No.39), are 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--

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(13) Retail Licensees Employing Minors. For any hotel, restaurant or club liquor licensee, or any retail dispenser,

to employ or to permit any minor under the age of eighteen to serve any alcoholic beverages or to employ or permit any minor under the age of sixteen to render any service whatever in the licensed premises, nor shall any entertainer under the age of eighteen be employed or permitted to perform in any licensed premises in violation of the labor laws of this Commonwealth: Provided, That in accordance with board regulations minors between the ages of sixteen and eighteen may be employed to serve food, clear tables and perform other similar duties, not to include the dispensing or serving of alcoholic beverages. A ski resort, golf course or amusement park licensee may employ minors fourteen and fifteen years of age to perform duties in rooms or areas of the licensed premises; however, such minors may not perform duties in rooms or areas in which alcohol is being concurrently dispensed or served or in which alcohol is being concurrently stored in an unsecured manner.

Notwithstanding any provisions of law to the contrary, a hotel, restaurant or club liquor licensee or any retail dispenser may allow students receiving instruction in a performing art to perform an exhibition in observance of ethnic heritage if the students are not compensated and are under proper supervision. Written notice of the performance must be provided to the enforcement bureau prior to the performance.

* * *

(24) Things of Value Offered as Inducement. For any licensee under the provisions of this article, or the board or any manufacturer, or any employe or agent of a manufacturer, licensee or of the board, to offer to give anything of value or to solicit or receive anything of value as a premium for the return of caps, stoppers, corks, stamps or labels taken from any bottle, case, barrel or package containing liquor or malt or brewed beverage, or to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define. This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores **or purchases of malt or brewed beverages through distributors and importing distributors** in accordance with conditions or regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase. This section shall not apply to the return of any monies specifically deposited for the return of the original container to the owners thereof.

* * *

(31) **(i) Sale or Purchase of Controlled Substance or Drug Paraphernalia by Licensee.** For any licensee[, his servants, agents or employes] to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia, as defined in the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," **on the licensed premises** unless the actions of the licensee [or person] are authorized by law.

(ii) Sale or Purchase of Controlled Substances or Drug Paraphernalia by Servant, Agent or Employe of the Licensee. For

any servants, agents or employes of the licensee to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia, as defined in "The Controlled Substance, Drug, Device and Cosmetic Act," on the licensed premises unless the actions of the person are authorized by law. The licensee shall only be cited for a violation of this subclause if the licensee knew or should have known of the activity and failed to take substantial affirmative steps to prevent the activity on its premises.

Section 7. This act shall take effect immediately.

APPROVED--The 6th day of January, A. D. 2006.

EDWARD G. RENDELL