

**LIQUOR CODE - INTERLOCKING BUSINESS PROHIBITED, BRAND
REGISTRATION, LIMITING NUMBER OF RETAIL LICENSES TO BE ISSUED
IN EACH COUNTY AND UNLAWFUL ACTS RELATIVE TO LIQUOR, MALT AND
BREWED BEVERAGES AND LICENSEES**

Act of Nov. 25, 2020, P.L. 1222, No. 125

Cl. 47

Session of 2020

No. 2020-125

HB 1617

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 general provisions applying to both liquor and malt and brewed beverages, further providing for interlocking business prohibited, for brand registration, for limiting number of retail licenses to be issued in each county 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 definitions of "alcoholic cider," "fermented fruit beverage," "malt or brewed beverages" and "mead" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, amended or added July 2, 2019 (P.L.324, No.45), 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:

* * *

"Alcoholic cider" shall mean a beverage which may contain carbonation in an amount not to exceed six and four tenths grams per liter, produced through alcoholic fermentation, which is primarily derived from apples, apple juice concentrate and water or pears, pear juice concentrate and water, consisting of at least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine[, a wine product] or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

* * *

"Fermented fruit beverage" shall mean a beverage which may contain carbonation in an amount not to exceed six and four tenths grams per liter, produced through alcoholic fermentation of fruit, fruit juice, fruit juice concentrate and water with or without flavorings, consisting of at least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale not as a wine[, a wine product] or a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

* * *

"Malt or Brewed Beverages" shall mean any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider, **fermented fruit beverage** and mead.

* * *

"Mead" shall mean an alcoholic beverage produced by fermenting a solution of at least fifty-one per centum honey, water and other agricultural products and containing not more than eight and one-half per centum alcohol by volume and sold or offered for sale as mead and not as a wine[, a wine product] or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

* * *

Section 1.1. Section 411(e) of the act is amended and the section is amended by adding a subsection to read:

Section 411. Interlocking Business Prohibited.--* * *

(e) Except as herein provided, no hotel, restaurant, retail dispenser or club licensee, and no officer, director or stockholder, agent or employe of any such licensee shall in any wise be interested, directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same, used by a distributor, importing distributor, or by an importer or sacramental wine licensee, in the conduct of his business; nor shall any hotel, restaurant, retail dispenser or club licensee, or any officer, director, stockholder, agent or employe of any such licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof, to any distributor, importing distributor, importer or sacramental wine licensee, for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used in the conduct of his business.

The purpose of this section is to require a separation of the financial and business interests between manufacturers and holders of hotel or restaurant liquor licenses and, as herein provided, of club licenses, issued under this article, and no person shall, by any device whatsoever, directly or indirectly, evade the provisions of the section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest by a manufacturer of any place occupied by a licensee under this article after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to July eighteenth, one thousand nine hundred thirty-five: Provided, however, That this clause shall not prohibit any hotel, restaurant or club liquor licensee, or any officer, director or stockholder of any such licensee, from owning land or buildings which are leased to a holder of a retail dispenser's license or a manufacturer's

license: And, provided further, That nothing contained in this section shall be construed to prohibit any hotel, restaurant, retail dispenser or club licensee or any officer, director or stockholder, agent or employe of any such licensee from having a financial or other interest, directly or indirectly in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against same, used, leased by an importer or sacramental wine licensee for the exclusive purpose of maintaining commercial offices and on the condition that said property is not used for the storage or sale of liquor or malt or brewed beverages in any quantity: And, provided further, That nothing contained in this section shall prohibit an officer or member of a licensed privately owned private golf course catering club from having an interest in a limited winery license: And, provided further, That nothing contained in this section shall be construed to prohibit a member of the governing board of a public authority created under subdivision (n) of Article XXIII of the act of August 9, 1955 (P.L.323, No.130), known as "The County Code," from having an interest in a distributor or importing distributor license notwithstanding the fact that the public authority has an interest in one or more retail licenses or acts as a landlord for one or more retail licenses: And, provided further, That, nothing in this section may prohibit an employe of a hotel or restaurant licensee from guaranteeing any loans, or lending any moneys, providing credit or giving anything of value to a limited winery licensee or its officers, directors and shareholders, provided that the person also is not an officer of or does not have any interest in or exercise any control over any other licensed entity that engages in any sales to or from the licensee: And, provided further, That, notwithstanding any other provision of this section, an entity may acquire both a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for use at the same location and more than one location may be so licensed. And, provided further, That, notwithstanding any other provision of this section, an entity licensed as a limited winery may hold and operate a restaurant liquor license at one of its additional, board-approved locations instead of at its primary location where manufacturing occurs. The licenses and a person's interest in the licenses or in the entity holding the licenses shall not be subject to this section. Provided further, That, a person who is a holder of ten per centum (10%) or less of securities or other interests in a publicly or privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity owning a retail license shall not be deemed to possess a financial interest and is not subject to the provisions of this section, provided that the person is not an officer of, employe of or does not have any interest in or exercise any control over any other licensed entity that engages in any sales to or from the retail licensee in which the person holds the ten per centum (10%) or less interest.[: And, provided further, That nothing in this section shall prohibit a person who has an ownership interest in a limited winery license from being employed by an entity that holds a hotel, restaurant, eating place or club license if the person is not employed as alcohol service personnel or as manager.]

(e.1) Nothing in subsection (e) shall prohibit any of the following:

(1) A person who has an ownership interest in a limited winery license from being employed by an entity that holds a

hotel, restaurant, eating place or club license if the person is not employed as alcohol service personnel or as manager.

(2) A person who has an ownership interest in a brewery license from being employed by an entity that holds a hotel, restaurant, eating place or club license if the person has no job duties or responsibilities on, or connected with, the licensed premises in any capacity.

* * *

Section 1.2. Section 445 of the act is amended by adding a subsection to read:

Section 445. Brand Registration.--* * *

(d) The label, product packaging and marketing materials for alcoholic cider, fermented fruit beverage and mead that are used in connection with the sale and distribution of alcoholic cider, fermented fruit beverage and mead may refer to the product as "wine-based," a "wine product" or in a similar manner or by a similar name with the product still treated as a malt or brewed beverage provided that the product is registered with the board as a malt or brewed beverage as provided under this section. No product that was sold in any Pennsylvania Liquor Store after January 1, 2018, may be designated as a malt or brewed beverage.

Section 2. Section 461(c) of the act is amended by adding a clause to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each County.--* * *

(c) The word "hotel" as used in this section shall mean any reputable place operated by a responsible person of good reputation where the public may, for a consideration, obtain sleeping accommodations, and which shall have the following number of bedrooms and requirements in each case--at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode:

* * *

(9.2) For two years after the effective date of this clause, upon application to the board and payment of a fee of thirty thousand dollars (\$30,000) by a hotel licensee, the board shall convert a hotel license under clause (8) of this subsection for a hotel licensee that applied for an exemption under clause (9) or (9.1) of this subsection before January 1, 2019, to a restaurant license without regard to the quota restrictions set forth in subsection (a). This clause shall not apply to a hotel license with a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1) until the application for renewal of the hotel license is approved. This clause shall not apply to hotel licenses in a city of the first class. An application to transfer a restaurant license that was converted from a hotel license under this clause in accordance with section 404 within five years after the board received the application for the restaurant license shall be subject to a fee of twenty-five per centum (25%) or thirty thousand dollars (\$30,000), whichever is greater, of the transactional cost for the transfer of the restaurant license to be paid by the seller of the license. As used in this paragraph, the term "transactional cost" shall mean the cost of the restaurant license.

* * *

Section 3. Section 493(11) 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--

* * *

(11) Licensees Employed by Others. For any hotel, restaurant or club liquor licensee, or any malt or brewed beverage licensee, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any distributor, importing distributor, manufacturer, importer or vendor licensee or any out of State manufacturer. It shall also be unlawful for any distributor or importing distributor, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any other distributor, importing distributor, manufacturer, importer, vendor, out of State manufacturer, hotel restaurant, malt or brewed beverage licensee, or club liquor licensee. It shall also be unlawful for any manufacturer, importer, or vendor licensee, or any out of State manufacturer, or any officer, servant, agent or employe of such licensee or manufacturer, to be at the same time employed, directly or indirectly, by any hotel, restaurant or club liquor licensee or any malt or brewed beverage licensee or any distributor or importing distributor licensee. Nothing in this subsection shall be construed to prohibit a manufacturer or limited winery licensee, or any officer, servant, agent or employe of such licensee, to be employed at the same time by a hotel, restaurant or retail dispenser licensee if the hotel, restaurant or retail dispenser licensee is located at the manufacturer or limited winery premises pursuant to section 443. For the purposes of this subsection, an officer, servant, agent or employe of a licensee or manufacturer is an individual who has either an ownership interest in the licensee or manufacturer or who receives compensation for his or her work on behalf of the licensee or manufacturer: Provided further, That nothing in this section shall prohibit a person who has an ownership interest in a limited winery license from being employed by an entity that holds a hotel, restaurant, eating place or club license if the person is not employed as alcohol service personnel or as a manager[.]: **And, provided further, That nothing in this section shall prohibit a person who has an ownership interest in a brewery license from being employed by an entity that holds a hotel, restaurant, eating place or club license if the person has no job duties or responsibilities on, or connected with, the licensed premises in any capacity.**

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

APPROVED--The 25th day of November, A.D. 2020.

TOM WOLF