

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 353 Session of 2011

INTRODUCED BY READSHAW, WAGNER, MUSTIO, CALTAGIRONE, D. COSTA,
DeLUCA, KORTZ, KULA, MILLARD AND M. O'BRIEN, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON LIQUOR CONTROL, FEBRUARY 1, 2011

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as
2 reenacted, "An act relating to alcoholic liquors, alcohol and
3 malt and brewed beverages; amending, revising, consolidating
4 and changing the laws relating thereto; regulating and
5 restricting the manufacture, purchase, sale, possession,
6 consumption, importation, transportation, furnishing, holding
7 in bond, holding in storage, traffic in and use of alcoholic
8 liquors, alcohol and malt and brewed beverages and the
9 persons engaged or employed therein; defining the powers and
10 duties of the Pennsylvania Liquor Control Board; providing
11 for the establishment and operation of State liquor stores,
12 for the payment of certain license fees to the respective
13 municipalities and townships, for the abatement of certain
14 nuisances and, in certain cases, for search and seizure
15 without warrant; prescribing penalties and forfeitures;
16 providing for local option, and repealing existing laws,"
17 providing for municipal authority to establish maximum
18 saturation ratios for licensed establishments.

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

21 Section 1. Section 404 of the act of April 12, 1951 (P.L.90,
22 No.21), known as the Liquor Code, reenacted and amended June 29,
23 1987 (P.L.32, No.14) and amended January 6, 2006 (P.L.1, No.1),
24 is amended to read:

25 Section 404. Issuance, Transfer or Extension of Hotel,
26 Restaurant and Club Liquor Licenses.--Upon receipt of the

1 application and the proper fees, and upon being satisfied of the
2 truth of the statements in the application that the applicant is
3 the only person in any manner pecuniarily interested in the
4 business so asked to be licensed and that no other person will
5 be in any manner pecuniarily interested therein during the
6 continuance of the license, except as hereinafter permitted, and
7 that the applicant is a person of good repute, that the premises
8 applied for meet all the requirements of this act and the
9 regulations of the board, that the applicant seeks a license for
10 a hotel, restaurant or club, as defined in this act, and that
11 the issuance of such license is not prohibited by any of the
12 provisions of this act, the board shall, in the case of a hotel
13 or restaurant, grant and issue to the applicant a liquor
14 license, and in the case of a club may, in its discretion, issue
15 or refuse a license: Provided, however, That in the case of any
16 new license or the transfer of any license to a new location or
17 the extension of an existing license to cover an additional area
18 the board may, in its discretion, grant or refuse such new
19 license, transfer or extension if such place proposed to be
20 licensed is within three hundred feet of any church, hospital,
21 charitable institution, school, or public playground, or if such
22 new license, transfer or extension is applied for a place which
23 is within two hundred feet of any other premises which is
24 licensed by the board: And provided further, That the board's
25 authority to refuse to grant a license because of its proximity
26 to a church, hospital, charitable institution, public playground
27 or other licensed premises shall not be applicable to license
28 applications submitted for public venues or performing arts
29 facilities: And provided further, That the board shall refuse
30 any application for a new license, the transfer of any license

1 to a new location or the extension of an existing license to
2 cover an additional area if, in the board's opinion, such new
3 license, transfer or extension would be detrimental to the
4 welfare, health, peace and morals of the inhabitants of the
5 neighborhood within a radius of five hundred feet of the place
6 proposed to be licensed: And provided further, That the board
7 shall have the discretion to refuse a license to any person or
8 to any corporation, partnership or association if such person,
9 or any officer or director of such corporation, or any member or
10 partner of such partnership or association shall have been
11 convicted or found guilty of a felony within a period of five
12 years immediately preceding the date of application for the said
13 license. The board shall refuse any application for a new
14 license, the transfer of any license to a new location or the
15 extension of any license to cover an additional area where the
16 sale of liquid fuels or oil is conducted. All issuances,
17 transfers or extensions under this section shall be subject to
18 any maximum saturation ratio established under section 493.1(a).
19 The board may enter into an agreement with the applicant
20 concerning additional restrictions on the license in question.
21 If the board and the applicant enter into such an agreement,
22 such agreement shall be binding on the applicant. Failure by the
23 applicant to adhere to the agreement will be sufficient cause to
24 form the basis for a citation under section 471 and for the
25 nonrenewal of the license under section 470. If the board enters
26 into an agreement with an applicant concerning additional
27 restrictions, those restrictions shall be binding on subsequent
28 holders of the license until the license is transferred to a new
29 location or until the board enters into a subsequent agreement
30 removing those restrictions. If the application in question

1 involves a location previously licensed by the board, then any
2 restrictions imposed by the board on the previous license at
3 that location shall be binding on the applicant unless the board
4 enters into a new agreement rescinding those restrictions. The
5 board may, in its discretion, refuse an application for an
6 economic development license under section 461(b.1) or an
7 application for an intermunicipal transfer of a license if the
8 board receives a protest from the governing body of the
9 receiving municipality. The receiving municipality of an
10 intermunicipal transfer or an economic development license under
11 section 461(b.1) may file a protest against the transfer of a
12 license into its municipality, and the receiving municipality
13 shall have standing in a hearing to present testimony in support
14 of or against the issuance or transfer of a license. Upon any
15 opening in any quota, an application for a new license shall
16 only be filed with the board for a period of six months
17 following said opening.

18 Section 2. Section 461(b.3) of the act, amended November 29,
19 2006 (P.L.1421, No.155), is amended to read:

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

22 (b.3) An intermunicipal transfer of a license or issuance of
23 a license for economic development under subsection (b.1)(2)(i)
24 must first be approved by the governing body of the receiving
25 municipality when the total number of existing restaurant liquor
26 licenses and eating place retail dispenser licenses in the
27 receiving municipality equal or exceed one license per three
28 thousand inhabitants. An intramunicipal transfer of a license or
29 issuance of a license for economic development under subsection
30 (b.1)(2)(i) must first be approved by the governing body of the

1 municipality if the municipality has created a maximum
2 saturation ratio pursuant to section 493.1(a) and the saturation
3 level is met or exceeded. Upon request for approval of an
4 intermunicipal transfer of a license or issuance of an economic
5 development license by an applicant, at least one public hearing
6 shall be held by the municipal governing body for the purpose of
7 receiving comments and recommendations of interested individuals
8 residing within the municipality concerning the applicant's
9 intent to transfer a license into the municipality or acquire an
10 economic development license from the Pennsylvania Liquor
11 Control Board. The governing body shall, within forty-five days
12 of a request for approval, render a decision by ordinance or
13 resolution to approve or disapprove the applicant's request for
14 an intermunicipal transfer of a license or issuance of an
15 economic development license. The municipality may approve the
16 request. A decision by the governing body of the municipality to
17 deny the request may not be appealed. A copy of the approval
18 must be submitted with the license application. The approval
19 requirement shall not apply to licenses transferred into a tax
20 increment district created pursuant to the act of July 11, 1990
21 (P.L.465, No.113), known as the "Tax Increment Financing Act,"
22 located in a township of the second class that is located within
23 a county of the second class if the district was created prior
24 to December 31, 2002, and the governing body of the township has
25 adopted an agreement at a public meeting that consents to the
26 transfer of licenses into the tax increment district. Failure by
27 the governing body of the municipality to render a decision
28 within forty-five days of the applicant's request for approval
29 shall be deemed an approval of the application in terms as
30 presented unless the governing body has notified the applicant

1 in writing of their election for an extension of time not to
2 exceed sixty days. Failure by the governing body of the
3 municipality to render a decision within the extended time
4 period shall be deemed an approval of the application in terms
5 as presented.

6 * * *

7 Section 3. Section 493.1(a) of the act, amended December 9,
8 2002 (P.L.1653, No.212), is amended to read:

9 Section 493.1. Rights of Municipalities Preserved.--(a)
10 Nothing in this act shall be construed to preempt the right of
11 any municipality to regulate zoning and enforce any other local
12 ordinances and codes dealing with health and welfare issues.
13 Further, a municipality may, in any zoning district where
14 licensed facilities are permitted, establish a maximum
15 saturation ratio for licensed establishments taking into account
16 one or more of the following: type of licensed use, type of
17 zoning district, the current saturation rate and the size of the
18 zoning district.

19 * * *

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