

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1096 Session of 2023

INTRODUCED BY MALAGARI, McANDREW, MADDEN, SANCHEZ, HILL-EVANS, LEADBETER, FREEMAN, BURGOS, HANBIDGE, GUENST, CEPEDA-FREYTIZ, CERRATO, WEBSTER, KENYATTA AND T. DAVIS, MAY 3, 2023

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, DECEMBER 11, 2023

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An
2 act relating to alcoholic liquors, alcohol and malt and
3 brewed beverages; amending, revising, consolidating and
4 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," in
17 preliminary provisions, further providing for definitions;
18 and, in licenses and regulations and liquor, alcohol and malt
19 and brewed beverages, further providing for public venue
20 license, for malt and brewed beverages manufacturers', <--
21 distributors' and importing distributors' licenses, for <--
22 interlocking business prohibited, AND for limiting number of <--
23 retail licenses to be issued in each county and for unlawful <--
24 acts relative to malt or brewed beverages and licensees.

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

27 Section 1. The definition of "public venue" in section 102
28 of the act of April 12, 1951 (P.L.90, No.21), known as the

1 Liquor Code, is amended to read:

2 Section 102. Definitions.--The following words or phrases,
3 unless the context clearly indicates otherwise, shall have the
4 meanings ascribed to them in this section:

5 * * *

6 "Public venue" shall mean a stadium, arena, convention
7 center, museum, zoo, amphitheater or [similar structure.]
8 amusement park as defined in section 2 of the act of June 18,
9 1984 (P.L.384, No.81), known as the "Amusement Ride Inspection
10 Act," situated on at least forty (40) acres of land regardless
11 of seating capacity, or similar structure. If the public venue
12 is a cruise terminal owned or leased by a port authority created
13 under the act of June 12, 1931 (P.L.575, No.200), entitled "An
14 act providing for joint action by Pennsylvania and New Jersey in
15 the development of the ports on the lower Delaware River, and
16 the improvement of the facilities for transportation across the
17 river; authorizing the Governor, for these purposes, to enter
18 into an agreement with New Jersey; creating The Delaware River
19 Joint Commission and specifying the powers and duties thereof,
20 including the power to finance projects by the issuance of
21 revenue bonds; transferring to the new commission all the powers
22 of the Delaware River Bridge Joint Commission; and making an
23 appropriation," it shall have no permanent seating requirement.
24 If the public venue is an open-air amphitheater owned by a port
25 authority created under the act of December 6, 1972 (P.L.1392,
26 No.298), known as the "Third Class City Port Authority Act," it
27 shall have no permanent seating requirement. If the public venue
28 is owned by a political subdivision, a municipal authority, the
29 Commonwealth, an authority created under the act of July 29,
30 1953 (P.L.1034, No.270), known as the "Public Auditorium

1 Authorities Law," an authority created under Article XXV-A of
2 the act of July 28, 1953 (P.L.723, No.230), known as the "Second
3 Class County Code," an art museum established under the
4 authority of the act of April 6, 1791 (3 Sm.L.20, No.1536),
5 entitled "An act to confer on certain associations of the
6 citizens of this commonwealth the powers and immunities of
7 corporations, or bodies politic in law," or an authority created
8 under Article XXIII (n) or (o) of the act of August 9, 1955
9 (P.L.323, No.130), known as "The County Code," it shall have
10 permanent seating for at least one thousand (1,000) people;
11 otherwise, it shall have permanent seating for at least two
12 thousand (2,000) people. The term shall also mean any regional
13 history center, multipurpose cultural and science facility,
14 museum or convention or trade show center, regardless of owner
15 and seating capacity, that has a floor area of at least sixty
16 thousand (60,000) square feet in one building or is comprised of
17 no less than three hundred fifty (350) acres and is a member of
18 the American Public Garden Association. The term shall also mean
19 a convention or conference center owned by a city of the third
20 class or a university which is a member of the Pennsylvania
21 State System of Higher Education which is operated by a
22 university foundation or alumni association, regardless of
23 seating capacity, that has a floor area of at least fifteen
24 thousand (15,000) square feet in one building. The term shall
25 also mean a visitor center, regardless of floor area or seating
26 capacity, that was established under the authority of the
27 Gateway Visitor Center Authorization Act of 1999 (Public Law
28 106-131, 113 Stat. 1678, 16 U.S.C. § 407m).

29 * * *

30 Section 2. Section 412(f)(1) of the act is amended and the

1 section is amended by adding subsections to read:

2 Section 412. Public Venue License.--* * *

3 (f) Licenses issued under this section are to be considered
4 restaurant liquor licenses. However, the following additional
5 restrictions and privileges apply:

6 (1) Sales may only be made one hour before, during and one
7 hour after any athletic performance, performing arts event,
8 trade show, convention, banquet or any other performance at the
9 facility; however, sales may not be made from two o'clock
10 antemeridian to seven o'clock antemeridian. In addition, sales
11 may not occur prior to eleven o'clock antemeridian on Sundays or
12 seven o'clock antemeridian on Mondays. Notwithstanding this
13 [section, facilities that had been licensed under former
14 sections] section:

15 (i) Facilities that had been licensed under former sections
16 408.9 and 408.14 may sell liquor and/or malt or brewed beverages
17 anytime except from two o'clock antemeridian to seven o'clock
18 antemeridian or prior to eleven o'clock antemeridian on Sundays
19 or seven o'clock antemeridian on Mondays, regardless of whether
20 there is a performance at the facility.

21 (ii) Amusement parks may sell liquor and malt or brewed
22 beverages from eleven o'clock antemeridian to eleven o'clock
23 postmeridian.

24 * * *

25 (h) An amusement park that holds a restaurant license before
26 January 1, 2022, and seeks to obtain a public venue license
27 shall exchange one existing restaurant license to the board in
28 return for a public venue license at no cost. A restaurant
29 license exchanged under this subsection shall be subject to a
30 license auction under section 470.3.

1 (i) An amusement park that holds a public venue license
2 shall utilize a transaction scan device to verify the age of an
3 individual who appears to be under thirty-five years of age
4 before making a sale of liquor and malt or brewed beverages,
5 however, an acceptable form of identification under section
6 495(a) that cannot be scanned may be accepted by the licensee.
7 An amusement park may not sell or share data from the use of a
8 transaction scan device, provided that the licensee may use the
9 data to show the enforcement bureau of the board that the
10 licensee is in compliance with this act. As used in this
11 subsection, the term "transaction scan device" means a device
12 capable of deciphering, in an electronically readable format,
13 the information encoded on the magnetic strip or bar code of an
14 identification card under section 495(a).

15 (j) As used in this section, the term "amusement park" shall
16 have the same meaning as defined in section 2 of the act of June
17 18, 1984 (P.L.384, No.81), known as the "Amusement Ride
18 Inspection Act."

19 ~~Section 3. Section 431(d) (1) of the act is amended and the~~ <--
20 ~~subsection is amended by adding a paragraph to read:~~

21 ~~Section 431. Malt and Brewed Beverages Manufacturers',~~
22 ~~Distributors' and Importing Distributors' Licenses. * * *~~

23 ~~(d) (1) All distributing rights as hereinabove required~~
24 ~~shall be in writing, shall be equitable in their provisions and~~
25 ~~shall be substantially similar as to terms and conditions with~~
26 ~~all other distributing rights agreements between the~~
27 ~~manufacturer giving such agreement and its other importing~~
28 ~~distributors and distributors shall not be modified, cancelled,~~
29 ~~terminated or rescinded by the manufacturer without good cause,~~
30 ~~and shall contain a provision in substance or effect as follows:~~

1 ~~"The manufacturer recognizes that the importing distributor and~~
2 ~~distributor are free to manage their business in the manner the~~
3 ~~importing distributor and distributor deem best and that this~~
4 ~~prerogative vests in the importing distributor and distributor~~
5 ~~the exclusive right to establish a selling price, to select the~~
6 ~~brands of malt or brewed beverages they wish to handle and to~~
7 ~~determine the efforts and resources, including the e commerce~~
8 ~~platform if one is used, which the importing distributor and~~
9 ~~distributor will exert to develop and promote the same of the~~
10 ~~manufacturer's products handled by the importing distributor and~~
11 ~~distributor. However, the manufacturer expects that the~~
12 ~~importing distributor and distributor will price competitively~~
13 ~~the products handled by them, devote reasonable effort and~~
14 ~~resources to the sale of such products and maintain a reasonable~~
15 ~~sales level." "Good cause" shall mean the failure by any party~~
16 ~~to an agreement, without reasonable excuse or justification, to~~
17 ~~comply substantially with an essential, reasonable and~~
18 ~~commercially acceptable requirement imposed by the other party~~
19 ~~under the terms of an agreement.~~

20 ~~(1.1) Providing or using an e commerce platform shall not be~~
21 ~~construed as providing a thing of value under section 493(24).~~

22 * * *

23 Section 4. Section 443 of the act is amended by adding a
24 subsection to read:

25 Section 443. Interlocking Business Prohibited. * * *

26 ~~(i) Notwithstanding any other provision of law to the~~
27 ~~contrary, a malt or brewed beverage manufacturer and its~~
28 ~~officers, directors, shareholders, servants, agents or employes~~
29 ~~may provide an e commerce platform or access to an e commerce~~
30 ~~platform to a distributor or importing distributor. The e~~

1 ~~commerce platform or access to the e-commerce platform may be~~
2 ~~provided free of charge or may be made available for a fee.~~

3 Section 5 3. Section 461(c) (9.2) of the act is amended to <--
4 read:

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

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

19 * * *

20 (9.2) For two years after the effective date of this clause,
21 upon application to the board and payment of a fee of thirty
22 thousand dollars (\$30,000) by a hotel licensee, the board shall
23 convert a hotel license under [clause (8)] clauses (8) and (8.1)
24 of this subsection for a hotel licensee that applied for an
25 exemption under clause (9) or (9.1) of this subsection before
26 [January] JULY 1, [2019] 2024, to a restaurant license without <--
27 regard to the quota restrictions set forth in subsection (a).
28 This clause shall not apply to a hotel license with a pending
29 objection by the director of the Bureau of Licensing or the
30 board under section 470(a.1) until the application for renewal

1 of the hotel license is approved. This clause shall not apply to
2 hotel licenses in a city of the first class. An application to
3 transfer a restaurant license that was converted from a hotel
4 license under this clause in accordance with section 404 within
5 five years after the board received the application for the
6 restaurant license shall be subject to a fee of twenty-five per
7 centum (25%) or thirty thousand dollars (\$30,000), whichever is
8 greater, of the transactional cost for the transfer of the
9 restaurant license to be paid by the seller of the license. As
10 used in this paragraph, the term "transactional cost" shall mean
11 the cost of the restaurant license.

12 * * *

13 ~~Section 6. Section 492 of the act is amended by adding a~~ <--
14 ~~paragraph to read:~~

15 ~~Section 492. Unlawful Acts Relative to Malt or Brewed~~
16 ~~Beverages and Licensees.—~~

17 ~~It shall be unlawful—~~

18 ~~* * *~~

19 ~~(23) Interfering with the use of e-commerce. For any~~
20 ~~manufacturer or retail licensee to prohibit or mandate any~~
21 ~~particular e-commerce platform by any distributor or importing~~
22 ~~distributor.~~

23 Section 7 4. This act shall take effect in 60 days. <--