

No. 1980-117

AN ACT

SB 518

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," further providing for the number of licenses in certain municipalities, permitting minors to enter licensed premises for social purposes under certain conditions, defining the term "proper supervision," authorizing special occasion permits for certain museums and performing arts groups in third class cities.

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

Section 1. Section 408.4, act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," amended July 9, 1976 (P.L.978, No.196), and October 7, 1976 (P.L.1095, No.220), is amended to read:

Section 408.4. Special Occasion Permits.—(a) Upon application of any hospital, church, synagogue, volunteer fire company, bona fide sportsmen's club in existence for at least ten years [or local Bicentennial committee recognized by the American Revolution Bicentennial Administration and so designated prior to June 1, 1976] and upon payment of a fee of fifteen dollars (\$15) per day, the board shall issue a special occasion permit good for a period of not more than three consecutive days. [The provisions of this subsection relating to the issuance of permits for Bicentennial units shall expire December 31, 1976.] *Special occasion permits may also be issued to a museum operated by a nonprofit corporation in a city of the third class or a nonprofit corporation engaged in the performing arts in a city of the third class for a period of not more than six nonconsecutive days at a fee of fifteen dollars (\$15) per day.*

(b) In any city, borough, incorporated town or township in which the sale of liquor and/or malt or brewed beverages has been approved by the electorate, such special occasion permit shall authorize the [hospital, church, synagogue, volunteer fire company, bona fide sportsmen's club in existence for at least ten years or local Bicentennial committee recognized by the American Revolution Bicentennial

Administration and so designated prior to June 1, 1976] permittee to sell liquor and/or malt or brewed beverages as the case may be to any adult person on any day for which the permit is issued. [The provisions of this subsection relating to the issuance of permits for Bicentennial units shall expire December 31, 1976.]

(c) Such special occasion permit shall only be valid for the number of days stated in the permit. Only one permit may be issued to any [hospital, church, synagogue, volunteer fire company, including their auxiliaries or affiliates, bona fide sportsmen's club in existence for at least ten years or local Bicentennial committee recognized by the American Revolution Bicentennial Administration and so designated prior to June 1, 1976] permittee during the year. *Provided, that a museum operated by a nonprofit corporation in a city of the third class and a nonprofit corporation engaged in the performing arts in a city of the third class may be issued no more than six permits during the year, each permit being valid for only one day.* The provisions of this subsection relating to the issuance of permits for Bicentennial units shall expire December 31, 1976.

(d) Such permits shall only be issued for use at a special event including, but not limited to bazaars, picnics and clambakes. The special event must be one which is used by the [hospital, church, synagogue, volunteer fire company, bona fide sportsmen's club in existence for at least ten years or local Bicentennial committee recognized by the American Revolution Bicentennial Administration and so designated prior to June 1, 1976] permittee as a means of raising funds for itself. [The provisions of this subsection relating to the issuance of permits for Bicentennial units shall expire December 31, 1976.]

(e) The provisions of this section shall not be applicable to any licensee now or hereafter possessing a caterer's license, nor to any professional fund raiser.

(f) Any person selling liquor or malt or brewed beverages in violation of this section shall, upon summary conviction, be sentenced to pay a fine of two hundred fifty dollars (\$250) for the first offense and a fine of five hundred dollars (\$500) for each subsequent offense. This fine shall be in addition to any other penalty imposed by law for the illegal sale of malt or brewed beverages.

Section 2. The act is amended by adding a section to read:

Section 408.6. Performing Arts Facilities.—(a) *The board is authorized to issue a restaurant liquor license to a nonprofit corporation or to a concessionaire selected by such nonprofit corporation in any city of the third class for the retail sale of liquor and malt or brewed beverages by the glass, open bottles or other container or in any mixture for consumption on any city-owned premises utilized as a nonprofit performing arts facility or any other premiss utilized as a nonprofit performing arts facility where there is an available seating capacity within the premises of one thousand or more: Provided,*

however, That no sale or consumption of such beverages shall take place on any portions of such premises other than service areas approved by the board.

(b) An application for the issuance may be filed at any time by a nonprofit corporation operating such a theater for the performing arts or by a concessionaire selected by such nonprofit corporation. Any such license granted under these provisions need not conform to the requirements of the act relating to restaurant liquor licenses, except as provided herein. Applicant shall submit such other information as the board may require. Applications shall be in writing on forms prescribed by the board and shall be signed and submitted to the board by the applicant. The filing fee which shall accompany the license application shall be thirty dollars (\$30).

(c) Upon receipt of the application in proper form and the application fee and upon being satisfied that the applicant is of good repute and financially responsible and that the proposed place of business is proper, the board shall issue the restaurant liquor license for the performing arts facility.

(d) The license shall be issued for the same period of time as provided for restaurant licenses and shall be renewed as provided in section 402. The license shall terminate upon revocation by the board or upon termination and nonrenewal of the contract between the concessionaire and such nonprofit corporation.

(e) The annual fee for a performing arts facility shall be as provided in section 405 and shall accompany the application for the license. Whenever and if a concessionaire's contract terminates and is not renewed the license shall be returned to the board for cancellation but the board may issue a restaurant liquor license to a subsequent applicant.

(f) The penal sum of the bond which shall be filed by an applicant for a performing arts facility pursuant to section 465 shall be two thousand dollars (\$2,000).

(g) Sales by the holder of a performing arts facility license may be made except to those persons prohibited under clause (1) of section 493 on board-approved service areas of the premises of such a facility for the performing arts during the hours in which the performance is being held and up to one hour before the scheduled opening and one hour after the scheduled closing, but such sales may not be made beyond the hours expressed in the code for the sale of liquor and malt or brewed beverages by restaurant licensees: Provided, however, That such sales may be made on Sunday between the hours of one o'clock postmeridian and ten o'clock postmeridian, irrespective of the volume of food sales.

(h) Whenever a contract with a concessionaire is terminated prior to the expiration date provided in the contract between such nonprofit corporation and the concessionaire and is not renewed, such nonprofit corporation may apply to the board for the issuance of a restaurant

liquor license or may select and certify to the board a different concessionaire which concessionaire shall apply to the board for the issuance of a restaurant liquor license. If the applicant meets the requirements of the board as herein provided, the issuance shall thereupon occur. If any such performing arts facility license is revoked, the board shall issue a new license to any qualified applicant without regard to the prohibition in section 471, against the grant of a license at the same premises for a period of at least one year.

(i) Licenses issued under the provisions of this section shall not be subject to the quota restrictions of section 461.

(j) Performing arts licenses shall not be subject to the provisions of section 404 except insofar as they relate to the reputation of the applicant nor to the provisions of sections 461 and 463, nor to the provisions of clause (10) of section 493.

(k) Sales under such licenses (including food sales) may be limited by the licensee to patrons of the events scheduled in the facility of the performing arts. Provided food is offered for sale when sales are made under the license, such food may be catered from off the premises.

Section 3. Subsection (a) of section 461 of the act, amended June 1, 1978 (P.L.451, No.56), is amended to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each Municipality.—(a) No licenses shall hereafter be granted by the board for the retail sale of malt or brewed beverages or the retail sale of liquor and malt or brewed beverages in excess of one of such licenses of any class for each two thousand inhabitants in any municipality, exclusive of licenses granted to airport restaurants, municipal golf courses, hotels and incorporated units of national veterans' organizations, as defined in this section, and clubs; but at least one such license may be granted in each municipality and in each part of a municipality where such municipality is split so that each part thereof is separated by another municipality, except in municipalities where the electors have voted against the granting of any retail licenses *and except in that part of a split municipality where the electors have voted against the granting of any retail licenses*. Nothing contained in this section shall be construed as denying the right to the board to renew or to transfer existing retail licenses of any class notwithstanding that the number of such licensed places in a municipality shall exceed the limitation hereinbefore prescribed; but where such number exceeds the limitation prescribed by this section, no new license, except for hotels, municipal golf courses, airport restaurants and incorporated units of national veterans' organizations, as defined in this section, shall be granted so long as said limitation is exceeded.

* * *

Section 4. Section 472 of the act, amended June 28, 1957 (P.L.419, No.231), is amended to read:

Section 472. Local Option.—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 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, with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years with respect to granting of licenses to wholesale distributors and importing distributors, or not more than once in four years 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 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 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 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 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.

Section 5. Clause (14) of section 493 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—
* * *

(14) Permitting Undesirable Persons or Minors to Frequent Premises. For any hotel, restaurant or club liquor licensee, or any retail

dispenser, his servants, agents or employes, to permit persons of ill repute, known criminals, prostitutes or minors to frequent his licensed premises or any premises operated in connection therewith, except minors accompanied by parents, guardians, or under proper supervision: *Provided, however, That it shall not be unlawful for any hotel, restaurant or club liquor licensee or any retail dispenser to permit minors under proper supervision upon the licensed premises or any premises operated in connection therewith for the purpose of a social gathering, even if such gathering is exclusively for minors: And provided further, That no liquor shall be sold, furnished or given to such minors nor shall the licensee knowingly permit any liquor or malt or brewed beverages to be sold, furnished or given to or be consumed by any minor, and the area of such gathering shall be segregated from the remainder of the licensed premises. In the event the area of such gathering cannot be segregated from the remainder of the licensed premises, all alcoholic beverages must be either removed from the licensed premises or placed under lock and key during the time the gathering is taking place. Notice of such gathering shall be given the Liquor Control Board as it may, by regulation, require. Any licensee violating the provisions of this clause shall be subject to the provisions of section 471.*

“Proper supervision,” as used in this clause, means the presence, on that portion of the licensed premises where a minor or minors are present, of one person twenty-five years of age or older for every fifty minors or part thereof who is directly responsible for the care and conduct of such minor or minors while on the licensed premises and in such proximity that the minor or minors are constantly within his sight or hearing. The presence of the licensee or any employe or security officer of the licensee shall not constitute proper supervision.

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Section 6. This act shall take effect in 60 days.

APPROVED—The 11th day of July, A. D. 1980.

DICK THORNBURGH