

## No. 1992-66

## AN ACT

## HB 1620

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 providing for the definition of "airport restaurant," for administrative law judges and for licenses for distilleries, wineries, bailees and transporters; providing for liquor licenses for concessionaires in cities of the second class A; further providing for brewery licenses, for liquor and malt and brewed beverage licensing for incorporated units of national veterans' organizations and for exemptions from licensure for distilleries, wineries, bailees and carriers; and making repeals.

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

Section 1. Section 212(c) 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 7, 1990 (P.L.622, No.160), is amended and the section is amended by adding subsections to read:

Section 212. Office of Administrative Law Judge.—\* \* \*

(c) Administrative law judges shall preside at all **[licensing,]** citation and other enforcement hearings required or permitted under this act. **[An administrative law judge shall recuse himself in a licensing proceeding if the licensee or prospective licensee can demonstrate that the judge has heard an enforcement matter concerning the licensee or prospective licensee. An administrative law judge shall recuse himself in an enforcement proceeding if the person subject to enforcement can demonstrate that the judge has heard a licensing matter concerning the person. Administrative law judges shall inform persons and their counsel of recusal rights under this subsection.]**

\* \* \*

*(h) The board shall select five hearing examiners from the complement of hearing examiners, who have been appointed by the Governor and who are employed by the board on the effective date of this subsection, to conduct the licensing hearings required by this act. The selection of the five hearing examiners shall be at the board's discretion.*

*(i) Nothing in this section or this act shall be construed or intended to change the terms and conditions of employment of the five hearing examiners selected by the board pursuant to subsection (h).*

Section 2. Section 402 of the act, amended December 7, 1990 (P.L.622, No.160), is amended to read:

Section 402. License Districts; License Year; Hearings.—(a) The board shall, by regulation, divide the State into convenient license districts and shall hold hearings on applications for licenses and renewals thereof, as it deems necessary, at a convenient place or places in each of said districts, at such times as it shall fix, by regulation, for the purpose of hearing testimony for and against applications for new licenses and renewals thereof. The board shall hold a hearing on any application for a new hotel, club or restaurant liquor license or the transfer of any such license to a new location, upon the request of any person with standing to testify under subsection (b) if the request is filed with the board within the first fifteen days of posting of the notice of application pursuant to section 403(g). The board [shall] *may* provide for the holding of such hearings by [administrative law judges, who] *hearing examiners learned in the law, to be appointed by the Governor, who shall not be subject to the act of August 5, 1941 (P.L. 752, No.286), known as the "Civil Service Act."* Such hearing examiners shall make a report to the board in each case with their recommendations. The board shall, by regulation, fix the license year for each separate district so that the expiration dates shall be uniform in each of the several districts but staggered as to the State.

(b) Where a hearing is held in the case of an application for a new hotel, club or restaurant liquor license or an application for the transfer of a hotel, club or restaurant liquor license to a new location, the board shall permit residents residing within a radius of five hundred feet of the premises to testify at the hearing. The board and any [administrative law judge] *hearing examiner* thereof shall give appropriate evidentiary weight to any testimony of such residents given at the hearing.

Section 3. The act is amended by adding a section to read:

*Section 408.10. Recreation Facilities.—(a) The board is authorized to issue a license in any city of the second class A 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 in any recreation facility on premises owned by the city, the county or a county authority.*

*(b) The application for a license under this section may be filed at any time by a concessionaire selected and certified by the city, county or authority and shall conform with all requirements for restaurant-liquor licenses and applications except as may otherwise be provided herein. The 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 twenty dollars (\$20).*

*(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 a license to the applicant.*

*(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 of the contract between the concessionaire and the city, county or authority.*

*(e) The annual fee for a license issued under this section shall be six hundred dollars (\$600) and shall accompany the application for the license. Whenever a concessionaire's contract terminates, the license shall be returned to the board for cancellation, and a new license shall be issued to a new applicant.*

*(f) The penal sum of the bond which shall be filed by an applicant for a license issued under this section, pursuant to section 465, shall be two thousand dollars (\$2,000), and in addition thereto the applicant shall file an additional bond in a sum to assure payment of any fine imposed by the board up to one thousand dollars (\$1,000).*

*(g) Sales by the holder of a license issued under this section may be made, except to those persons prohibited under clause (1) of section 493, on premises owned by the city, county or authority and available for use for recreation during the hours in which the recreation activity is being held and up to one hour after the scheduled closing, and at functions which are incidental to or part of the recreation activities, but such sales may not be made beyond the hours expressed in the code for the sale of liquor by restaurant licensees: Provided, however, That such sales may be made on Sunday between the hours of twelve o'clock noon and ten o'clock postmeridian: And, provided further, That during the hours expressed in this act for the sale of liquor by hotel licensees, sales of such liquor or malt or brewed beverages may be made by said licensee at banquets, not incidental to recreation activities, at which more than two thousand persons are scheduled to attend, and at functions irrespective of attendance, which are directly related to recreation activities.*

*(h) Whenever a contract is terminated prior to the expiration date provided in the contract between the city, county or authority and the concessionaire, the city, county or authority may select and certify to the board a different concessionaire which concessionaire shall apply to the board for a new license. If the applicant meets the requirements of the board as herein provided, a new license shall thereupon be issued. If any license issued under this subsection 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 (1) year.*

Section 4. Section 433 of the act, amended December 7, 1990 (P.L.622, No.160), is amended to read:

Section 433. Public Service Licenses.—The board may issue public service malt and brewed beverage licenses to a railroad, pullman or steamship company permitting malt or brewed beverages to be sold at retail in dining, club or buffet cars, or the dining compartments of steamships or vessels, for consumption on the trains, steamships or vessels wherever operated in the State, except when standing in stations or terminals within a municipality wherein retail sales are prohibited. Such licenses shall only be granted to reputable persons and for fit places. The board may issue a master license to railroad or pullman companies to cover the maximum number of cars which the company shall estimate that it will operate within the Com-

monwealth on any one day. Such licensees shall file monthly reports with the board showing the maximum number of cars operated at any time on any day during the preceding month, and if it appears that more cars have been operated than covered by its license it shall forthwith remit to the board the sum of ten dollars for each extra car so operated. The board shall have the power to suspend or revoke any such licenses for cause after granting *to the licensee* a hearing before **[an administrative law judge] a hearing examiner**. Any person aggrieved by the decision of the board in refusing, suspending or revoking any such license may appeal to the Commonwealth Court in the same manner as provided in this article for appeals from refusals of licenses.

Section 5. Section 446 of the act is amended by adding a clause to read:

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

\* \* \*

*(3) Use brewery storage and distribution facilities for the purpose of receiving, storing and distributing malt or brewed beverages manufactured outside this Commonwealth if the beverages are distributed in this Commonwealth only through specific importing distributors who shall have first been given distributing rights for such products in designated geographical areas through the distribution system required for out-of-State manufacturers under section 431(b) as well as all other pertinent sections of this act. The manufacturer of the beverages must comply with section 444.*

Section 6. Sections 461(d) and 461.1 of the act are amended to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each Municipality.—\* \* \*

(d) “Airport restaurant,” as used in this section, shall mean restaurant facilities at any airport for public accommodation, which are owned or operated directly or through lessees by the Commonwealth of Pennsylvania, by any municipal authority, county or city, either severally or jointly, with any other municipal authority, county or city, but shall not include any such restaurant facilities at any airport situated in a municipality where by vote of the electors the retail sale of liquor and malt or brewed beverages is not permitted. *An airport restaurant is not subject to the seating requirements nor to the square footage requirements of the definition of restaurant in section 102. An airport restaurant may have unlimited extensions of service areas providing all extended service areas are inside the airport terminal building or buildings, notwithstanding any intervening thoroughfares.*

\* \* \*

Section 461.1. Incorporated Units of National Veterans’ Organizations.—(a) The board shall have the authority to issue new licenses to incorporated units of national veterans’ organizations, as defined herein, in municipalities where the number of licenses exceeds the limitation prescribed by section 461.

(b) The term “national veterans’ organization” shall mean any veterans’ organization having a national charter.

The term “incorporated unit of a national veterans’ organization” shall mean any incorporated post, branch, camp, detachment, lodge or other subordinate unit of a national veterans’ organization having one hundred or

more paid up members and organized for a period of at least **[three years] one year** prior to filing the application for a license.

(c) When the charter of an incorporated unit of a national veterans' organization is suspended or revoked, the retail license of the organization shall also be suspended or revoked. The retail license of an incorporated unit of a national veterans' organization is not transferable to any other organization or person.

Section 7. Section 464 of the act, amended December 7, 1990 (P.L. 622, No. 160), is amended to read:

Section 464. Hearings Upon Refusal of Licenses, Renewals or Transfers; Appeals.—The board may of its own motion, and shall upon the written request of any applicant for club, hotel or restaurant liquor license, or any applicant for any malt or brewed beverage license other than a public service license, or for renewal or transfer thereof, whose application for such license, renewal or transfer has been refused, fix a time and place for hearing of such application for license or for renewal or transfer thereof, notice of which hearing shall be mailed to the applicant at the address given in his application. Such hearing shall be before **[an administrative law judge] a hearing examiner designated by the board**. At such hearing, the board shall present its reasons for its refusal or withholding of license, renewal or transfer thereof. The applicant may appear in person or by counsel, may cross-examine the witnesses for the board and may present evidence which shall likewise be subject to cross-examination by the board. Such hearing shall be stenographically recorded. **[The administrative law judge shall thereafter make a report, including the judge's recommendation, to the board in each case.] The hearing examiner shall thereafter report, with the examiner's recommendation, to the board in each case.** The board shall thereupon grant or refuse the license, renewal or transfer thereof. In considering the renewal of a license, the board shall not refuse any such renewal on the basis of the propriety of the original issuance or any prior renewal of such license. If the board shall refuse such license, renewal or transfer following such hearing, notice in writing of such refusal shall be mailed to the applicant at the address given in his application. In all such cases, the board shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order and furnish a copy thereof to the applicant. Any applicant who has appeared at any hearing, as above provided, who is aggrieved by the refusal of the board to issue any such license or to renew or transfer any such license may appeal, or any church, hospital, charitable institution, school or public playground located within three hundred feet of the premises applied for, aggrieved by the action of the board in granting the issuance of any such license or the transfer of any such license, may take an appeal limited to the question of such grievance, within twenty days from date of refusal or grant, to the court of common pleas of the county in which the premises applied for is located. Such appeal shall be upon petition of the aggrieved party, who shall serve a copy thereof upon the board, whereupon a hearing shall be held upon the petition by the court upon ten days' notice to the board. The said appeal shall act as a supersedeas unless upon sufficient cause shown the court

shall determine otherwise. The court shall hear the application de novo on questions of fact, administrative discretion and such other matters as are involved, at such time as it shall fix, of which notice shall be given to the board. The court shall either sustain or over-rule the action of the board and either order or deny the issuance of a new license or the renewal or transfer of the license to the applicant.

Section 8. Section 502 of the act is amended to read:

Section 502. Exemptions.—No license hereunder shall be required from any registered pharmacist; or a physician licensed by the State Board of Medicine; or any person who makes and sells vinegar, nonalcoholic cider and fruit juices; or any person who manufactures, stores, sells or transports methanol, propanol, butanol and amanol; or any person who conducts a wholesale drug business; or any person who manufactures alcoholic preparations not fit for use as a beverage, other than denatured alcohol or for beverage purposes; any person engaged in the manufacture; possession or sale of patent, patented or proprietary medicines, toilet, medicinal or antiseptic preparations unfit for beverage purposes, or solutions or flavoring extracts or syrups unfit for beverage purposes; or any person who manufactures or sells paints, varnishes, enamels, lacquers, stains or paint, or varnish removing or reducing compounds, or wood fillers; or any person who manufactures any substance where the alcohol or any liquor is changed into other chemical substances and does not appear in the finished product as alcohol or liquor; or any common carrier by railroad which is subject to regulation by the Pennsylvania Public Utility Commission of the Commonwealth of Pennsylvania, or scheduled common carriers by air of mail and passengers; or any person who sells, stores or transports alcohol or liquor completely denatured, as specified by the board[.]; *or any person licensed under Article IV for malt and brewed beverages who manufactures, distills or otherwise produces alcohol as a byproduct of the manufacture of any reduced alcohol or nonalcohol malt or brewed beverage if the byproduct is not intended nor used as a beverage for human consumption except as part of the malt or brewed beverage.*

Section 9. Section 507(a) and (b) of the act, amended December 7, 1990 (P.L.622, No.160), are amended to read:

Section 507. Hearings on Licenses and Refusals.—(a) The board may of its own motion, and shall upon the written request of the enforcement bureau or of any applicant for license or for renewal thereof whose application for such license or renewal has been refused, fix a time and place for hearing of such application or renewal, notice of which hearing shall be sent to the bureau and to the applicant, by registered mail, at the address given in his application. Such hearing shall be before **[an administrative law judge] a hearing examiner designated by the board.**

(b) At such hearing, the board shall present its reasons for its refusal or withholding of such license or renewal thereof or the bureau shall present its objections to the granting or renewal of the license, as the case may be. The applicant may appear in person or by counsel, may cross-examine the witnesses for the board or the bureau, and may present evidence which shall

likewise be subject to cross-examination by the board or the bureau. Such hearing shall be stenographically recorded. The **[administrative law judge] hearing examiner** shall thereafter make a report, including the **[judge's] examiner's** recommendation, to the board in each case. The board shall thereafter grant or refuse the license or renewal thereof.

\* \* \*

Section 10. The following acts are repealed:

Act of March 31, 1856 (P.L.200, No.233), entitled "An act to Regulate the Sale of Intoxicating Liquors."

Act of April 13, 1859 (P.L.614, No.606), entitled "An act for the better Regulation of Billiard Rooms, Bowling Saloons and Ten-pin Alleys, in the counties of Chester and Delaware."

Act of March 12, 1866 (P.L.182, No.154), entitled "An act relative to duties and powers of constables and railroad conductors, in the counties of Erie, Crawford, Luzerne, Susquehanna and Pike."

Act of April 12, 1875 (P.L.48, No.52), entitled "An act to prevent the sale of intoxicating liquors, and for the preservation of order at soldiers' encampments or re-unions."

Section 11. This act shall take effect as follows:

- (1) The amendment of sections 402, 433, 464 and 507(a) and (b) of the act shall take effect June 30, 1992, or immediately, whichever is later.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1992.

ROBERT P. CASEY