

## No. 1994-77

## AN ACT

## HB 103

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 special occasion permits, for definitions, for license issuance and for unlawful acts; imposing duties on the Pennsylvania Liquor Control Board; providing for certain transfers in cities of the first class; and further providing 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. Section 102 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), is amended by adding definitions 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:

\* \* \*

***"Patron" shall mean an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises except those actually engaged in an employment related activity.***

\* \* \*

***"Purchase" shall mean obtaining food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration.***

\* \* \*

***"Service" shall mean the act of providing food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages to a patron.***

***"Vacate" shall mean to physically leave a licensed premises.***

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Section 2. Section 404 of the act is amended to read:

Section 404. Issuance of Hotel, Restaurant and Club Liquor Licenses.—Upon receipt of the application, the proper fees and bond, and upon being satisfied of the truth of the statements in the application that the

applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person will be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter permitted, and that the applicant is a person of good repute, that the premises applied for meet all the requirements of this act and the regulations of the board, that the applicant seeks a license for a hotel, restaurant or club, as defined in this act, and that the issuance of such license is not prohibited by any of the provisions of this act, the board shall, in the case of a hotel or restaurant, grant and issue to the applicant a liquor license, and in the case of a club may, in its discretion, issue or refuse a license: Provided, however, That in the case of any new license or the transfer of any license to a new location the board may, in its discretion, grant or refuse such new license or transfer if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises which is licensed by the board: And provided further, That the board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed: ***And provided further, That prior to July 1, 1996, in any license district in a city of the first class, the board may, in its opinion, refuse any application for a new license or for any person-to-person transfer which shall include a change in stockholders involving ten per centum or more of all outstanding voting stock and/or less than ten per centum of all outstanding voting stock when such change involves a majority or controlling interest, of any license if the licensed premises is or would be within three hundred feet of any church, hospital, charitable institution, school or public playground or within two hundred feet of any other premises licensed by the board and if, in the opinion of the board, the licensed premises is or would be detrimental to the welfare, health, peace and morals of such church, hospital, school, public playground and/or the inhabitants of the neighborhood within a radius of five hundred feet of the licensed premises. This authority to refuse a person-to-person transfer in a city of the first class is in addition to and not in derogation of the authority of the board generally stated for all areas of this Commonwealth:*** And provided further, That the board shall not issue new licenses in any license district more than twice each license year, effective from specific dates fixed by the board, and new licenses shall not be granted, except for hotels as defined in this act, unless the application therefor shall have been filed at least thirty days before the effective date of the license: And provided further, That nothing herein contained shall prohibit the board from issuing a new license for the balance of any unexpired term in any license district to any applicant in such district, who shall have become eligible to hold such license as the result of

legislative enactment, when such enactment shall have taken place during the license term of that district for which application is made or within the thirty days immediately preceding such term, nor shall anything herein contained prohibit the board from issuing at any time a new license for an airport restaurant, or municipal golf course, as defined in section 461 of this act, for the balance of the unexpired license term in any license district: And provided further, That the board shall have the discretion to refuse a license to any person or to any corporation, partnership or association if such person, or any officer or director of such corporation, or any member or partner of such partnership or association shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the said license. The board shall refuse any application for a new license or the transfer of any license to a location where the sale of liquid fuels or oil is conducted.

Section 3. Section 408.4 of the act, amended July 2, 1993 (P.L.429, No.61), is amended to read:

Section 408.4. Special Occasion Permits.—(a) Upon application of any hospital, church, synagogue, volunteer fire company, volunteer ambulance company, volunteer rescue squad, bona fide sportsmen's club in existence for at least ten years, nationally chartered veterans' organization and any affiliated lodge or subdivision of such organization, fraternal benefit society that is licensed to do business in this Commonwealth and any affiliated lodge or subdivision of such fraternal benefit society, or the auxiliary of any of the foregoing, and upon payment of the prescribed fee for special occasion permits under section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the board shall issue a special occasion permit good for a period of not more than five consecutive or nonconsecutive days: Provided, however, That the five nonconsecutive days shall be used in a three-month period measured from the date of the first day. Special occasion permits may also be issued to a museum operated by a nonprofit corporation in a city of the third class *or township of the first 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 or ten consecutive days at the prescribed fee for special occasion permits under section 614-A of "The Administrative Code of 1929."

(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 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.

(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 permittee during the year. Provided, that a museum operated by a nonprofit corporation in a city of the third class *or township of the first 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, or in the alternative, one permit valid for no more than a total of ten consecutive days per year, which may be issued only during the month of August.

(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 permittee as a means of raising funds for itself.

(d.1) The hours during which the holder of a special occasion permit may sell liquor or malt or brewed beverages shall be limited to the hours set forth in section 406 which are applicable to hotel and restaurant licensees. The hours during which a nonprofit corporation engaged in the performing arts in a city of the third class may sell liquor or malt or brewed beverages pursuant to a special occasion permit shall be limited to those hours set forth in section 408.3(g.1).

(d.2) At least forty-eight hours prior to the sale of any liquor or malt or brewed beverages, the holder of a special occasion permit shall notify the local police department, or in the absence of a local police department, the Pennsylvania State Police, of the times when and place where the sale of liquor or malt or brewed beverages shall occur.

(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 4. Section 461(a) of the act, amended April 29, 1994, (P.L.212, No.30), 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 three thousand inhabitants in any municipality, exclusive of licenses granted to airport restaurants, municipal golf courses, hotels, privately-owned public golf courses and units of nonprofit nationally chartered clubs, as defined in this section, ***whose applications are filed on or before December 31, 1994, and except those units falling under section 461.1***, 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, privately-owned public golf courses, privately-owned private golf course licensees and units of nonprofit nationally chartered clubs, as defined in this section, *whose applications are filed on or before December 31, 1994, and except those units falling under section 461.1*, shall be granted so long as said limitation is exceeded.

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Section 5. Section 464 of the act, amended June 30, 1992 (P.L.327, No.66), 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, *or for the renewal of an amusement permit*, whose application for such license, renewal or transfer, *or the renewal of an amusement permit*, has been refused, fix a time and place for hearing of such application for license or for renewal or transfer thereof, *or the renewal of an amusement permit*, notice of which hearing shall be mailed to the applicant at the address given in his application. Such hearing shall be before 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, *or its refusal for renewal of an amusement permit*. 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 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 *or the renewal of an amusement permit*. In considering the renewal of a license *or amusement permit*, 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 *or amusement permit*. If the board shall refuse such license, renewal or transfer *or the renewal of an amusement permit*, 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 *or to renew any amusement permit* 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 *or permit* 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 *or the renewal of an amusement permit* to the applicant.

Section 6. The act is amended by adding a section to read:

**Section 478. Renewal of Amusement Permit.**—(a) *Upon the annual review of the operating history of a licensee prior to the validation period or the periodic renewal of the license, the Director of the Bureau of Licensing shall have the authority to state objection to the renewal of the amusement permit as required by section 493(10). Such objection shall be based upon the operating history, and notice shall be provided to the licensee in writing, by certified mail, at the address listed on the license. Upon the completion of any hearing conducted concerning the renewal of the amusement permit pursuant to section 464, the board may, in its opinion, refuse to renew the amusement permit.*

(b) *In cases where the board refuses to renew the amusement permit of any licensee, the licensee or the applicant or manager or person with a majority or controlling interest of either in the operation of this or any other license may not again be eligible to receive a new permit from the board until the expiration of a period of up to two years from the final adjudication on such matter based upon board opinion.*

(c) *Any appeal to court filed by a licensee pursuant to section 464 concerning the renewal of a permit shall act as supersedeas unless upon sufficient cause shown the reviewing authority determines otherwise. Upon the filing of a motion by the board to vacate supersedeas, the reviewing authority shall rule on the motion forthwith.*

Section 7. Sections 491(5) and 493(7) of the act are amended to read:

Section 491. Unlawful Acts Relative to Liquor, Alcohol and Liquor Licensees.—

It shall be unlawful—

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(5) Failure to [Break] *Properly Dispose of Empty Liquor Containers.* For any restaurant, hotel or club licensee, his servants, agents or employes, to fail to break any package in which liquors were contained, except those decanter

packages that the board determines to be decorative, within twenty-four hours after the original contents were removed therefrom[.], *unless the licensee participates in either a municipal recycling program, in accordance with the act of July 28, 1988 (P.L.556, No.101), known as the "Municipal Waste Planning, Recycling and Waste Reduction Act," or a voluntary recycling program. The licensee shall provide proof in writing of the participation in a recycling program upon the demand of the Bureau of Liquor Control Enforcement of the Pennsylvania State Police. The proof of participation shall be provided in a manner as prescribed by the Pennsylvania Liquor Control Board.*

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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—

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(7) **Alcoholic Strength on Label of Malt or Brewed Beverages.** For any licensee, or his servants, agents or employes, to transport, sell, deliver or purchase any malt or brewed beverages upon which there shall appear a label or other informative data which [in any manner] refers to the alcoholic contents of the malt or brewed beverage[, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such malt or brewed beverage was produced.] *in any terms other than as a percentage of alcohol by volume. This clause shall be construed to permit, but not to require, a manufacturer to designate upon the label or descriptive data the alcoholic content of malt or brewed beverages in percentage of alcohol by volume.* This clause shall not be construed to prohibit a manufacturer from designating upon the label or descriptive data the alcoholic content of malt or brewed beverages intended for shipment into another state or territory, when the laws of such state or territory require that the alcoholic content of the malt or brewed beverage must be stated upon the package.

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Section 8. The act is amended by adding a section to read:

**Section 493.1. Rights of Municipalities Preserved.**—*Nothing in this act shall be construed to preempt the right of any municipality to regulate zoning and enforce any other local ordinances and codes dealing with health and welfare issues.*

Section 9. Section 499 of the act, added December 7, 1990 (P.L.622, No.160), is amended to read:

Section 499. Premises to be Vacated by Patrons.—(a) Except as provided for [in subsection (b)] *elsewhere in this section*, all patrons of a licensee shall be required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later

than one-half hour after the time the licensee is required by this act to cease serving liquor or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted to remove any previously served liquor or malt or brewed beverages from that part of the premises. *Patrons of a licensee shall not be permitted to reenter that portion of the premises habitually used for the serving of liquor or malt or brewed beverages between the time designated by this act for patrons to vacate the licensed premises and the time designated by this act when the serving of liquor or malt or brewed beverages is allowed to begin unless the licensee has been granted a permit for extended hours food service.*

*(a.1) Subsection (a) shall not apply to sales of malt and brewed beverages for consumption off the premises when the following conditions are met:*

*(1) no licensee may sell malt or brewed beverages in excess of one hundred ninety-two fluid ounces in any one sale for consumption off the premises;*

*(2) sales and service of malt and brewed beverages for consumption off the premises are made prior to the designated time the licensee is required by this act to cease serving liquor, malt or brewed beverages;*

*(3) persons who have purchased malt and brewed beverages for consumption off the premises shall remove the malt and brewed beverages from the premises by the designated time as contained in this act that patrons are required to vacate the premises;*

*(4) no club licensee may sell any malt or brewed beverage for consumption off the premises where sold or to any persons who are not members of the club.*

*(b) A licensee may [serve food] remain open between the hours of two o'clock antemeridian and seven o'clock antemeridian for the purpose of serving food on any day if such licensee either possesses or is eligible to purchase a Sunday sales permit [in accordance with section 406] and receives an extended hours food license. The board shall establish an annual fee for the extended hours food license which shall not exceed fifty dollars (\$50).*

*(b.1) Upon application of any club, the board shall issue a club extended hours food permit for a period of six (6) days during the term of its license. The board shall issue regulations governing terms of the application. The permits shall be used solely for the purpose of serving food between the hours of three o'clock antemeridian and seven o'clock antemeridian. All patrons of a licensee shall be required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee is required by this act to cease serving liquor or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted*



*to remove any previously served liquor or malt or brewed beverages from that part of the premises.*

(c) Any [owner of licensed premises] licensee who violates this section for the first offense commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than three hundred dollars (\$300) or to imprisonment for not more than ninety (90) days, or both, and for the second or any subsequent offense commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand five hundred dollars (\$2,500) or to imprisonment for not more than one (1) year, or both.

Section 10. (a) The amendment of section 404 of the act shall apply to applications filed after the effective date of the amendment of section 404 of the act.

(b) If an application under subsection (a) has not received final action before July 1, 1996, the application shall be governed by the law at the time the application was filed. This subsection shall apply until all appeals have been exhausted.

Section 11. By December 31, 1995, the Pennsylvania Liquor Control Board shall submit a report on the implementation of the amendment of section 404 of the act to the Law and Justice Committee of the Senate and the Liquor Control Committee of the House of Representatives.

Section 12. This act shall take effect as follows:

(1) The amendment of section 404 of the act shall take effect in 30 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 5th day of October, A.D. 1994.

ROBERT P. CASEY