

No. 2005-39

AN ACT

SB 462

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 sales by Pennsylvania liquor stores, for authority to issue liquor licenses to hotels, restaurants and clubs, for sales by liquor licensees regarding Sunday sales, for sale of malt or brewed beverages by liquor licensees, for malt and brewed beverages retail licenses, for retail dispensers' restrictions on purchases and sales, for revocation and suspension of licenses, for renewal of amusement permits, for the point system for certain licensees and for the assessment of points for noncompliance; providing for renewal of permit for sales for off-premises consumption in cities of the first class; further providing for unlawful acts relative to malt or brewed beverages and licensees; and providing for hours of operation relative to manufacturers, importing distributors and distributors and 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 305(b) 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 to read:

Section 305. Sales by Pennsylvania Liquor Stores.—* * *

(b) Every Pennsylvania Liquor Store shall sell liquors at wholesale to hotels, restaurants, clubs, and railroad, pullman and steamship companies licensed under this act; and, under the regulations of the board, to pharmacists duly licensed and registered under the laws of the Commonwealth, and to manufacturing pharmacists, and to reputable hospitals approved by the board, or chemists. ***Sales to licensees shall be made at a price that includes a discount of ten per centum from the retail price.*** The board may sell to registered pharmacists only such liquors as conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia. The board may sell at special prices under the regulations of the board, to United States Armed Forces facilities which are located on United States Armed Forces installations and are conducted pursuant to the authority and regulations of the United States Armed Forces. All other sales by such stores shall be at retail. A person entitled to purchase liquor at wholesale prices may purchase the liquor at any

Pennsylvania Liquor Store upon tendering cash, check or credit card for the full amount of the purchase. For this purpose, the board shall issue a discount card to each licensee identifying such licensee as a person authorized to purchase liquor at wholesale prices. Such discount card shall be retained by the licensee. The board may contract through the Commonwealth bidding process for delivery to wholesale licensees at the expense of the licensee receiving the delivery.

* * *

Section 2. Section 401(a) of the act is amended to read:

Section 401. Authority to Issue Liquor Licenses to Hotels, Restaurants and Clubs.—(a) Subject to the provisions of this act and regulations promulgated under this act, the board shall have authority to issue a retail liquor license for any premises kept or operated by a hotel, restaurant or club and specified in the license entitling the hotel, restaurant or club to purchase liquor from a Pennsylvania Liquor Store and to keep on the premises such liquor and, subject to the provisions of this act and the regulations made thereunder, to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises. Such licensees, other than clubs, shall be permitted to sell malt or brewed beverages for consumption off the premises where sold in quantities of not more than one hundred ninety-two fluid ounces in a single sale to one person *as provided for in section 407*. Such licenses shall be known as hotel liquor licenses, restaurant liquor licenses and club liquor licenses, respectively. No person who holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States of America or the penal laws of the Commonwealth of Pennsylvania or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any hotel or restaurant liquor license, nor shall such a person have any interest, directly or indirectly, in any such license.

* * *

Section 3. Section 406(a) of the act, amended December 30, 2003 (P.L.423, No.59), is amended to read:

Section 406. Sales by Liquor Licensees; Restrictions.—(a) (1) Every hotel, restaurant or club liquor licensee may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel or restaurant habitually used for the serving of food to guests or patrons, or in a bowling alley that is immediately adjacent to and under the same roof as a restaurant, and in the case of hotels, to guests, and in the case of clubs, to members, in their private rooms in the hotel or club. No club licensee nor its officers, servants, agents or employees, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club. The holder of a restaurant license located in a hotel may sell liquor or malt or brewed beverages for consumption in that part of the restaurant habitually used for

the serving of meals to patrons and also to guests in private guest rooms in the hotel. For the purpose of this paragraph, any person who is an active member of another club which is chartered by the same state or national organization shall have the same rights and privileges as members of the particular club. For the purpose of this paragraph, any person who is an active member of any volunteer firefighting company, association or group of this Commonwealth, whether incorporated or unincorporated, shall upon the approval of any club composed of volunteer firemen licensed under this act, have the same social rights and privileges as members of such licensed club. For the purposes of this paragraph, the term "active member" shall not include a social member. Any club licensee which is either an incorporated unit of a national veterans' organization or an affiliated organization as defined in section 461.1 shall be permitted to sell liquor or malt or brewed beverages to any active member of another unit which is chartered by the same national veterans' organization or to any member of a nationally chartered auxiliary associated with the same national veterans' organization.

(2) Hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees may sell liquor and malt or brewed beverages only after seven o'clock antemeridian of any day until two o'clock antemeridian of the following day, except Sunday, and except as hereinafter provided, may sell liquor and malt or brewed beverages on Sunday between the hours of twelve o'clock midnight and two o'clock antemeridian.

(3) Hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees [whose sales of food and nonalcoholic beverages are equal to thirty per centum or more of the combined gross sales of both food and alcoholic beverages] may sell liquor and malt or brewed beverages on Sunday between the hours of eleven o'clock antemeridian and two o'clock antemeridian Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." *This clause shall not apply to cities of the first class.*

(3.1) Hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees in cities of the first class whose sales of food and nonalcoholic beverages are equal to thirty per centum or more of the combined gross sales of both food and alcoholic beverages may sell liquor and malt or brewed beverages on Sunday between the hours of eleven o'clock antemeridian and two o'clock antemeridian Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of "The Administrative Code of 1929."

(4) Hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees which do not qualify for and purchase such special permit, their servants, agents or employes may sell liquor and malt or brewed beverages only after seven o'clock antemeridian of any day and until two o'clock antemeridian of the following day, and shall not sell after two o'clock antemeridian on Sunday. No club licensee or its servants, agents or employes may sell liquor or malt or brewed beverages between the hours of three o'clock antemeridian and seven o'clock antemeridian on any day. No public service liquor licensee or its servants, agents, or employes may sell liquor or malt or brewed beverages between the hours of two o'clock antemeridian and seven o'clock antemeridian on any day.

(6) Notwithstanding any provisions to the contrary, whenever the thirty-first day of December falls on a Sunday, every hotel or restaurant liquor licensee, their servants, agents or employes may sell liquor and malt or brewed beverages on any such day after one o'clock postmeridian and until two o'clock antemeridian of the following day.

(6.1) Notwithstanding any provisions to the contrary, whenever Saint Patrick's Day falls on a Sunday, every hotel or restaurant liquor licensee, their servants, agents or employes may sell liquor and malt or brewed beverages on any such day after seven o'clock antemeridian and until two o'clock antemeridian of the following day.

* * *

Section 4. Section 407 of the act is amended to read:

Section 407. Sale of Malt or Brewed Beverages by Liquor Licensees.—(a) Every liquor license issued to a hotel, restaurant, club, or a railroad, pullman or steamship company under this subdivision (A) for the sale of liquor shall authorize the licensee to sell malt or brewed beverages at the same places but subject to the same restrictions and penalties as apply to sales of liquor, except that licensees other than clubs may sell malt or brewed beverages for consumption off the premises where sold in quantities of not more than one hundred ninety-two fluid ounces in a single sale to one person. No licensee under this subdivision (A) shall at the same time be the holder of any other class of license, except a retail dispenser's license authorizing the sale of malt or brewed beverages only.

(b) (1) Notwithstanding subsection (a), after October 31, 2005, a restaurant licensee located in a city of the first class who is otherwise permitted to sell malt or brewed beverages for consumption off the premises may not do so unless it acquires a permit from the board.

(2) The application for a permit to sell malt or brewed beverages for consumption off the premises shall be on forms designated by the board and contain such information as the board may require. The application and renewal fee shall be as prescribed in section 614-A(27) of the act of

April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(3) *The application for a permit to sell malt or brewed beverages for consumption off the premises must be accompanied by a copy of the approval of such request by the governing body of the city of the first class in which the licensed premises is located.*

(4) *The governing body of a city of the first class must render a decision by ordinance or resolution within forty-five days of receipt of a request for approval of a permit to sell malt or brewed beverages for consumption off the premises. The governing body must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the city or its residents. A decision by the city to deny a request may be appealed to the court of common pleas in the county in which the city is located. The failure to render a decision by the governing body of a city of the first class within the forty-five-day period shall be deemed approval of the permit.*

(5) *Upon being satisfied that the applicant has fulfilled all the requirements of this act and the board's regulations, the board shall approve the application.*

Section 5. Section 432(f) of the act, amended December 20, 2000 (P.L.992, No.141), is amended and the section is amended by adding a subsection to read:

Section 432. Malt and Brewed Beverages Retail Licenses.—* * *

(f) *Hotel, eating places, or municipal golf course retail dispenser licensees [whose sales of food and nonalcoholic beverages are equal to thirty per centum (30%) or more of the combined gross sales of both food and malt or brewed beverages] may sell malt or brewed beverages between the hours of eleven o'clock antemeridian on Sunday and two o'clock antemeridian on Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," which shall be in addition to any other license fees. This subsection shall not apply to cities of the first class.*

(g) *Hotel, eating places or municipal golf course retail dispenser licensees in cities of the first class whose sales of food and nonalcoholic beverages are equal to thirty per centum (30%) or more of the combined gross sales of both food and malt or brewed beverages may sell malt or brewed beverages between the hours of eleven o'clock antemeridian on Sunday and two o'clock antemeridian on Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of "The Administrative Code of 1929," which shall be in addition to any other license fees.*

Section 6. Section 442(a) of the act is amended to read:

Section 442. Retail Dispensers' Restrictions on Purchases and Sales.—(a) **(1) No retail dispenser shall purchase or receive any malt or**

brewed beverages except in original containers as prepared for the market by the manufacturer at the place of manufacture. The retail dispenser may thereafter break the bulk upon the licensed premises and sell or dispense the same for consumption on or off the premises so licensed: Provided, however, That no retail dispenser may sell malt or brewed beverages for consumption off the premises in quantities in excess of one hundred ninety-two fluid ounces: Provided, further, That no club licensee may sell any malt or brewed beverages for consumption off the premises where sold or to persons not members of the club.

(2) Notwithstanding paragraph (1), after October 31, 2005, a retail dispenser licensee located in a city of the first class who is otherwise permitted to sell malt or brewed beverages for consumption off the premises may not do so unless it acquires a permit from the board.

(3) The application for a permit to sell malt or brewed beverages for consumption off the premises shall be on forms designated by the board and contain such information as the board may require. The application and renewal fee shall be as prescribed in section 614-A(28) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(4) The application for a permit to sell malt or brewed beverages for consumption off the premises must be accompanied by a copy of the approval of such request by the governing body of the city of the first class in which the licensed premises is located.

(5) The governing body of a city of the first class must render a decision by ordinance or resolution within forty-five days of receipt of a request for approval of a permit to sell malt or brewed beverages for consumption off the premises. The governing body must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the city or its residents. A decision by the city to deny a request may be appealed to the court of common pleas in the county in which the city is located. The failure to render a decision by the governing body of a city of the first class within the forty-five-day period shall be deemed approval of the permit.

(6) Upon being satisfied that the applicant has fulfilled all the requirements of this act and the board's regulations, the board shall approve the application.

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Section 7. Section 471(b) of the act, amended February 21, 2002 (P.L.103, No.10), is amended to read:

Section 471. Revocation and Suspension of Licenses; Fines.—* * *

(b) Hearing on such citations shall be held in the same manner as provided herein for hearings on applications for license. Upon such hearing, if satisfied that any such violation has occurred or for other sufficient cause, the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one

thousand dollars (\$1,000), or both, notifying the licensee by registered letter addressed to his licensed premises. If the licensee has been cited and found to have violated section 493(1) insofar as it relates to sales to minors or sales to a visibly intoxicated person, section 493(10) insofar as it relates to lewd, immoral or improper entertainment or section 493(14), (16) or (21), or has been found to be a public nuisance pursuant to section 611, or if the owner or operator of the licensed premises or any authorized agent of the owner or operator has been convicted of any violation of the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or of 18 Pa.C.S. § 5902 (relating to prostitution and related offenses) or 6301 (relating to corruption of minors), at or relating to the licensed premises, the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both. However, if a licensee has been cited and found to have violated section 493(1) as it relates to sales to minors or sales to a visibly intoxicated person but at the time of the sale the licensee was in compliance with the requirements set forth in section 471.1 and the licensee had not sold to minors or visibly intoxicated persons in the previous four years, then the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both. The administrative law judge shall notify the licensee by registered mail, addressed to the licensed premises, of such suspension, revocation or fine. In the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license, notifying the licensee by registered mail addressed to the licensed premises. Suspensions and revocations shall not go into effect until thirty days have elapsed from the date of the adjudication during which time the licensee may take an appeal as provided for in this act, *except that revocations mandated in section 481(c) shall go into effect immediately*. Any licensee whose license is revoked shall be ineligible to have a license under this act until the expiration of three years from the date such license was revoked. In the event a license is revoked, no license shall be granted for the premises or transferred to the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises, except in cases where the licensee or a member of his immediate family is not the owner of the premises, in which case the board may, in its discretion, issue or transfer a license within the said year. In the event the bureau or the person who was fined or whose license was suspended or revoked shall feel aggrieved by the adjudication of the administrative law judge, there shall be a right to appeal to the board. The appeal shall be based solely on the record before the administrative law judge. The board shall only reverse the decision of the administrative law judge if the administrative law judge committed an error of law, abused its discretion or if its decision is not based on substantial evidence. In the event

the bureau or the person who was fined or whose license was suspended or revoked shall feel aggrieved by the decision of the board, there shall be a right to appeal to the court of common pleas in the same manner as herein provided for appeals from refusals to grant licenses. Each of the appeals shall act as a supersedeas unless, upon sufficient cause shown, the reviewing authority shall determine otherwise; however, if the licensee has been cited and found to have violated section 493(1) insofar as it relates to sales to minors or sales to a visibly intoxicated person, section 493(10) insofar as it relates to lewd, immoral or improper entertainment or section 493(14), (16) or (21), or has been found to be a public nuisance pursuant to section 611, or if the owner or operator of the licensed premises or any authorized agent of the owner or operator has been convicted of any violation of "The Controlled Substance, Drug, Device and Cosmetic Act," or of 18 Pa.C.S. § 5902 or 6301, at or relating to the licensed premises, *or if the license has been revoked under section 481(c)*, its appeal shall not act as a supersedeas unless the reviewing authority determines otherwise upon sufficient cause shown. In any hearing on an application for a supersedeas under this section, the reviewing authority may consider, in addition to other relevant evidence, documentary evidence, including records of the bureau, showing the prior history of citations, fines, suspensions or revocations against the licensee; and the reviewing authority may also consider, in addition to other relevant evidence, evidence of any recurrence of the unlawful activity occurring between the date of the citation which is the subject of the appeal and the date of the hearing. *If the reviewing authority is the board, no hearing shall be held on the application for a supersedeas; however, a decision shall be made based on the application, answer and documentary evidence under this subsection. If the application for a supersedeas is for a license that has been revoked under section 481(c), the reviewing authority shall grant the supersedeas only if it finds that the licensee will likely prevail on the merits.* No penalty provided by this section shall be imposed for any violations provided for in this act unless the bureau notifies the licensee of its nature within thirty days of the completion of the investigation.

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Section 8. Section 478 of the act, added October 5, 1994 (P.L.522, No.77) and repealed in part December 9, 2002 (P.L.1653, No.212), is amended to read:

Section 478. *Renewal of Amusement Permit; Renewal of Permit for Sales for Off-Premises Consumption in Cities of the First Class.*—(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] *discretion*, 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) 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 permit for sale of malt or brewed beverages required under section 407 or 442. Any 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 permit pursuant to section 464, the board may, in its discretion, refuse to renew the permit.

(d) In cases where the board refuses to renew the permit for sale of malt or brewed beverages required under section 407 or 442 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.

Section 9. Sections 479 and 481 of the act, added December 8, 2004 (P.L.1810, No.239), are amended to read:

Section 479. Point System for Certain Licensees.—(a) (1) A numerical system for liquor license control is hereby established for use in cities of the first class. The system shall be utilized in conjunction with other provisions of this act for license transfer, renewal, suspension or revocation.

(2) [Every liquor and malt beverages] *Every restaurant and eating place* licensee in cities of the first class who has been cited for a violation under section 471 shall have points assessed to his license record as of the date of the final adjudication. *Public venue and performing arts facility license holders are not subject to the point assessment.*

(b) The following shall be considered enhanced penalty violations and the administrative law judge shall assign five to ten points depending upon the circumstances surrounding the violations to a license record for each and every enhanced penalty violation [even when arising from the same core of operative facts:] *and, for citations with more than one count, for each and every count of the citation that involves an enhanced penalty violation:*

(1) a violation of section 493(1) as relates to sales to minors and visibly intoxicated individuals;

(2) a violation of section 493(10) as relates to lewd, immoral or improper entertainment;

(3) a violation of section 493(14) as relates to permitting undesirable persons or minors to frequent premises;

(4) a violation of section 493(16) as relates to furnishing liquor at unlawful hours;

(5) a violation of section 493(21) as relates to refusing inspection;

(6) a violation of section 611 as relates to public nuisances;

(7) any violation of [the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," permitted by the owner, employees or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises;] *section 493(31) as relates to sale or purchase of a controlled substance or drug paraphernalia;*

(8) a violation of 18 Pa.C.S. § 5902 (relating to prostitution and related offenses) committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises;

(9) a violation of 18 Pa.C.S. § 6301 (relating to corruption of minors) committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises; or

(10) a violation of 18 Pa.C.S. (relating to crimes and offenses) if the violation is graded as a felony.

(c) (1) Except as provided in subsections (b) and (d), the board shall, by regulation, assign points ranging on a scale of one to five for violations set forth in this act and its regulations.

(2) If a licensee [or his agent] is found to have violated two or more nonenhanced violations [under this act arising from the same core of operative facts, points shall be assigned only for the violation for which the greatest number of points may be assessed.] *in a single citation and the licensee was not found to have violated any enhanced violations in that same citation, then the licensee shall only be assigned points for the violation for which the greatest number of points may be assigned.*

(3) *If a licensee is found to have violated two or more violations of which are included both enhanced and nonenhanced violations in a single citation, then the licensee shall only be assigned points for the enhanced violations.*

(d) Two points shall be assessed for the following violations:

(1) section 467 as relates to failure to display license under transparent material;

(2) section 491(5) as relates to failure to properly dispose of empty liquor containers;

(3) section 493(6) as relates to brand or trade name on spigot;

(4) section 493(12) as relates to failure to have records on premises;

(5) section 493(20) as relates to unlawful advertising;

(6) 40 Pa. Code § 3.51 (relating to liquor) as relates to inside passages and connections to residence;

(7) 40 Pa. Code § 5.42 (relating to lighting) as relates to adequate lighting;

(8) 40 Pa. Code §§ 5.51(a) (relating to cleaning of coils, tap rods and connections) and 5.52 (relating to certificate or record required) as relates to cleaning of coils and maintenance of records on the cleaning of coils; *or*

(9) a violation of any requirement of the board or the city to obtain or maintain the license issued by the board.; *or*

(10) a violation of section 13(32) or (33) of the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," by any person in a licensed premises.]

(e) Whenever points are assigned to a license record, the administrative law judge shall send to that licensee a notice regarding the points assigned and emphasizing the nature and effects of the point system. Failure to receive such letter shall not prevent the assignment of points or the subsequent revocation of license privileges under this section.

(f) As used in this section, "final adjudication" shall mean when the administrative law judge has rendered a decision on the citation notwithstanding any appeals of that decision.

(g) The establishment of a point system does not in any way limit the right of an administrative law judge to revoke a license under section 471, nor does it limit the board's rights to not renew a license or amusement permit under sections 470 and 478.

Section 481. School, Mandatory Safekeeping or Revocation of License Privilege on Accumulation of Points.—(a) Except as provided for in subsection (c), when any license accumulates ten points or more, the administrative law judge shall require the license holder to become compliant with and remain compliant with the responsible alcohol management provisions of section 471.1. Failure to comply with such an order within ninety days, shall result in two additional points being assessed against the license record.

(b) When any license accumulates fifteen points or more, the administrative law judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party in an arm's-length transaction. A license transferred under this subsection shall have the points assigned to it reduced to ten upon completion of the transfer. If within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two additional points shall be removed from the license record.

(c) Notwithstanding any other provision of this act, when any license accumulates **[two enhanced penalty violations under section 479(b) within a two-year period or accumulates two or more points within two years after an initial accumulation of ten points]** *twenty points or more in more than one citation*, the administrative law judge shall revoke the license. **[and the license may be immediately confiscated by the board,**

Pennsylvania State Police or local law enforcement. This shall be followed by a hearing before the administrative law judge within fifteen days following seizure.

(d) An appeal of an order issued under this section shall not act as an automatic stay of the order. The licensee has the right to seek a supersedeas under the Pennsylvania Rules of Procedure. The application for the appellate supersedeas would be submitted to the reviewing authority and would have to demonstrate how the administrative law judge abused his authority, committed an error of law, or failed to base his findings of fact upon substantial evidence.]

Section 10. Section 492(4) of the act, amended December 20, 1996 (P.L.1513, No.196), is amended to read:

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

It shall be unlawful—

* * *

(4) Activities of Manufacturers, Importing Distributors or Distributors on Sunday. For any manufacturer of malt or brewed beverages, importing distributor or distributor, or the servants, agents or employes of the same, to sell malt or brewed beverages between the hours of [twelve o'clock midnight] *eleven o'clock postmeridian* of any Saturday and [two o'clock] *eight o'clock* in the forenoon of the following Monday[.], *except that a distributor or importing distributor may sell malt or brewed beverages on Sunday between the hours of twelve o'clock noon and five o'clock postmeridian. Upon purchase of a permit from the board at an annual fee of one hundred dollars (\$100), manufacturers, importing distributors and distributors, or the servants, agents or employes of the same, may sell malt or brewed beverages to anyone not licensed under this act or to a holder of a special occasion permit on Sunday between the hours of noon and five o'clock postmeridian.* Notwithstanding any other provision of this section, delivery or receiving of malt or brewed beverages shall be permissible on Sunday after prior arrangement as follows:

(i) A manufacturer may deliver to any importing distributor or distributor to which the manufacturer has granted wholesale distribution rights for the manufacturer's product.

(ii) An importing distributor or distributor may deliver to any organization to which a special occasion permit has been issued between the hours of nine o'clock antemeridian and [five o'clock postmeridian] *twelve o'clock noon.*

(iii) An importing distributor or distributor may deliver to anyone not licensed under this act between the hours of nine o'clock antemeridian and [five o'clock postmeridian] *twelve o'clock noon.*

The term "prior arrangement" shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two

hundred fifty dollars (\$250) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery.

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Section 11. The act is amended by adding a section to read:

Section 492.1. Hours of Operation Relative to Manufacturers, Importing Distributors and Distributors.—Manufacturers may sell malt or brewed beverages between two o'clock antemeridian of any Monday and twelve o'clock midnight of the following Saturday. Notwithstanding this section, manufacturers operating a brewery pub under section 446 shall be subject to the hours of operation set forth by the board through regulation. Importing distributors and distributors may sell malt or brewed beverages between two o'clock antemeridian of any Monday and twelve o'clock midnight of the following Saturday to holders of a liquor or malt and brewed beverage license or permit issued by the board. Importing distributors and distributors may sell malt or brewed beverages between eight o'clock antemeridian and eleven o'clock postmeridian of any day, except Sunday, to persons not licensed or permitted by this act.

Section 12. Section 493(2) of the act, amended December 8, 2004 (P.L.1810, No.239), is amended and the section is amended by adding a clause 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—

* * *

(2) Purchase or Sale of Liquor or Malt or Brewed Beverages on Credit; Importing Distributors or Distributors Accepting Cash. For any licensee, his agent, servant or employe, to sell or offer to sell or purchase or receive any liquor or malt or brewed beverages except for cash, excepting credit extended by a hotel or club to a bona fide guest or member, or by railroad or pullman companies in dining, club or buffet cars to passengers, for consumption while enroute, holding authorized credit cards issued by railroad or railroad credit bureaus or by hotel, restaurant, retail dispenser eating place, club and public service licensees, importing distributors or distributors to customers not possessing a license under this article and holding credit cards issued in accordance with regulations of the board or credit cards issued by banking institutions subject to State or Federal regulation: Provided further, That nothing herein contained shall be construed to prohibit the use of checks or drafts drawn on a bank, banking institution, trust company or similar depository, organized and existing under the laws of the United States of America or the laws of any state, territory or possession thereof, in payment for any liquor or malt or brewed beverages if the purchaser is the payor of the check or draft and the licensee is the payee: Provided further, That notwithstanding any other provision of this act to the

contrary, it shall be unlawful for an importing distributor or distributor to accept cash for payment of any malt or brewed beverages from anyone possessing a license issued under this article[.], ***except it shall be permissible for the importing distributor or distributor to accept money orders or cashiers' checks for payment of any malt or brewed beverages in addition to any other type of payment authorized by the board from anyone possessing a license under this article.*** No right of action shall exist to collect any claim for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for original containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for such containers or as a deposit on containers when title is retained by the vendor, if such original containers have been returned to the licensee. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for liquor or malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the liquor or malt or brewed beverages so sold are actually transported and delivered to points outside of the Commonwealth: Provided, however, That as to all transactions affecting malt or brewed beverages to be resold or consumed within this Commonwealth, every licensee shall pay and shall require cash deposits on all returnable original containers and all such cash deposits shall be refunded upon return of the original containers.

* * *

(31) Sale or Purchase of Controlled Substance or Drug Paraphernalia. For any licensee, his servants, agents or employes to possess, furnish, sell, offer to sell, or purchase or receive, or aid and abet in the sale or purchase of any controlled substance or drug paraphernalia, as defined in the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," unless the actions of the licensee or person are authorized by law.

Section 13. This act shall take effect as follows:

- (1) The amendment or addition of sections 305(b), 401(a), 407, 442(a), 478, 492(4) and 492.1 of the act shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 6th day of July, A.D. 2005.

EDWARD G. RENDELL