

No. 1980-221

AN ACT

HB 1527

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 penalties for out-of-state manufacturers of malt or brewed beverages; providing for licenses of incorporated units of national veterans' organizations; authorizing the board to transfer certain licenses to performing arts facilities; providing for certain licensees who are immediately adjacent to bowling alleys; further providing for establishments proximate to interstate highways and making editorial changes.

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

Section 1. Section 102, act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," is amended by adding a definition 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:

* * *

"Performing arts facilities" shall mean those halls or theaters in which live musical, concert, dance, ballet and legitimate play book-length productions are performed. Performing arts facilities shall not mean those halls or theaters in which burlesque shows or reviews are performed.

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Section 2. Subsection (a) of section 406 of the act, amended July 3, 1980 (No.88), is amended to read:

Section 406. Sales by Liquor Licensees; Restrictions.—(a) 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 when no minors are present in the bowling alley,*** 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 employes, 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. In the case of a restaurant located in a hotel which is not operated by the owner of the hotel and which is licensed to sell liquor under this act, liquor and malt or brewed beverages may be sold 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.

Hotel and restaurant liquor licensees, airport restaurant liquor licensees and municipal golf course restaurant liquor 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.

Hotel and restaurant liquor licensees, airport restaurant liquor licensees and municipal golf course restaurant liquor licensees whose sales of food and nonalcoholic beverages are equal to forty 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 one o'clock postmeridian and two o'clock antemeridian Monday upon purchase of a special annual permit from the board at a fee of two hundred dollars (\$200.00) per year, which shall be in addition to any other license fees.

Hotel and restaurant liquor licensees, airport restaurant liquor licensees and municipal golf course restaurant liquor licensees which do not qualify for and purchase such annual 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 hotel, restaurant and public service liquor licensee shall sell liquor and malt or brewed beverages after two o'clock antemeridian on any day on which a general, municipal, special or primary election is being held until one hour after the time fixed by law for closing the polls, except, that, in the case of a special election for members of the General Assembly or members of

the Congress of the United States, when such special election is held on other than a primary, municipal or general election day, licensees in those Legislative or Congressional Districts may make such sales, as though the day were not a special election day. 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.

Any hotel, restaurant, club or public service liquor licensee may, by [given] giving notice to the board, advance by one hour the hours herein prescribed as those during which liquor and malt or brewed beverages may be sold during such part of the year when daylight saving time is being observed generally in the municipality in which the place of business of such licensee is located. Any licensee who elects to operate his place of business in accordance with daylight saving time shall post a conspicuous notice in his place of business that he is operating in accordance with daylight saving time.

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.

* * *

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

Section 408.7. Performing Arts Facilities.—(a) *The board is authorized to transfer a restaurant liquor license purchased by any person or by a concessionaire selected by such person in any city of the first or second 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 performing arts facility or any other premise utilized as a 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 transfer may be filed at any time by a person operating such a theater for the performing arts or by a concessionaire selected by such person. 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 transfer 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 transfer the restaurant liquor license for the performing arts facility.

(d) The license shall be transferred 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 person.

(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 and the board may transfer a restaurant liquor license purchased by 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 person and the concessionaire and is not renewed, such person may apply to the board for the transfer of a restaurant liquor license purchased by such person, or may select and certify to the board a different concessionaire which concessionaire shall apply to the board for the transfer of a restaurant liquor license purchased by such concessionaire. If the applicant meets the requirements of the board as herein provided, a transfer shall thereupon occur. If any such performing arts facility license is revoked, the board shall transfer a license for any qualified applicant who has purchased a restaurant liquor license 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) 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 section 463, nor to the provisions of clause (10) of section 493.

(j) Sales under such licenses (including food sales) may be limited by the licensee to portions 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 4. Subsection (b) of section 442 of the act, amended October 9, 1967 (P.L.413, No.183), is amended to read:

Section 442. Retail Dispensers' Restrictions on Purchases and Sales.—* * *

(b) No retail dispenser shall sell any malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a retail dispenser from selling malt or brewed beverages in a hotel or club house in any room of such hotel or club house occupied by a bona fide registered guest or member entitled to purchase the same *or to prohibit a retail dispenser from selling malt or brewed beverages in a bowling alley when no minors are present where the licensed premises and bowling alley are immediately adjacent and under the same roof.*

* * *

Section 5. Subsections (e), (f) and (i) of section 444 of the act are amended to read:

Section 444. Malt or Brewed Beverages Manufactured Outside This Commonwealth.—* * *

(e) Upon such hearing, whether or not an appearance was made by such outside manufacturer, if satisfied that any such violation has occurred, the board is specifically empowered and directed to [immediately issue an order prohibiting the importation of malt or brewed beverages manufactured by such manufacturer into this Commonwealth for a period of not less than six months nor more than three years] *issue an order imposing a fine upon such outside manufacturer of not less than five hundred dollars (\$500) or more than ten thousand dollars (\$10,000), or prohibiting the importation of malt or brewed beverages manufactured by such outside manufacturer into this Commonwealth for a period not exceeding three years, or both. Such fine or prohibition shall not go into effect until twenty days have elapsed from the date of notice of issuance of the board's order, during which time such manufacturer may take an appeal as provided for in this act. The aforesaid appeal shall act as a supersedeas unless upon sufficient cause shown the court shall determine otherwise.*

(f) [Notice] *If, after hearing, the board prohibits the importation of malt or brewed beverages manufactured by such outside manufacturer into this Commonwealth, notice of such board action shall be given immediately to such manufacturer and to all persons licensed to import malt or brewed beverages within this Commonwealth by mailing a copy of such order to such manufacturer at its principal*

place of business, wherever located, and to such licensees at their licensed premises. Thereafter, it shall be unlawful for any person licensed to import malt or brewed beverages within this Commonwealth to purchase [or sell] any malt or brewed beverages manufactured by such outside manufacturer during the term of such prohibition.

* * *

(i) Any outside manufacturer aggrieved by the action of the board may appeal to the [quarter sessions court of Dauphin County] *Commonwealth Court* in the same manner as herein provided for appeals from refusals to grant licenses. *Upon appeal, the court shall in the exercise of its discretion, sustain, reject, alter or modify the findings, conclusions and penalties of the board, based on the findings of fact and conclusions of law as found by the court.*

Section 6. Subsections (a) and (f) of section 461 of the act, subsection (a) amended July 11, 1980 (No.117) and subsection (f) added June 1, 1978 (P.L.451, No.56), are 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, *and* 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, *and* airport restaurants [and incorporated units of national veterans' organizations], as defined in this section, shall be granted so long as said limitation is exceeded.

* * *

[(f) 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 as of, and organized prior to, January 1, 1975.]

Section 7. The act is amended by adding a section to read:

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 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 8. Section 463 of the act is amended by adding a subsection to read:

Section 463. Places of Amusement Not To Be Licensed; Penalty.

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(a.2) Nothing contained in this act shall be construed to prevent the holder of restaurant liquor or malt and brewed beverage license from selling liquor and malt or brewed beverages in a bowling alley when no minors are present where the restaurant and bowling alley are immediately adjacent and under the same roof. The restaurant liquor or malt and brewed beverage licensee aforementioned shall be subject to all the conditions and restrictions applicable to such restaurant licenses except the above prohibition against any passageway or communication between a licensed premise and a place of amusement.

* * *

Section 9. Subsection (a) of section 475 of the act, added November 26, 1978 (P.L.1389, No.326), is amended to read:

Section 475. Establishments Proximate to Interstate Highways Not To Be Licensed.—(a) No license for the sale of liquor or malt or brewed beverages in any quantity shall be granted to the proprietor, lessee, keeper or manager of an establishment [any part of] the entrance to which is located within three hundred feet of any part of a ramp of an interstate limited access highway.

* * *

Section 10. Clause (6) of section 491 of the act is amended to read:

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

It shall be unlawful—

* * *

(6) Sales by Restaurant and Hotel Liquor Licensees. For any restaurant or hotel licensee, his servants, agents or employes, to sell any liquor or malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a hotel licensee, or a restaurant licensee when the restaurant is located in a hotel, from selling liquor or malt or brewed beverages in any room of such hotel occupied by a bona fide guest *or to prohibit a restaurant licensee from selling liquor or malt or brewed beverages in a bowling alley when no minors are present where the restaurant and bowling alley are immediately adjacent and under the same roof.*

* * *

Section 11. This act shall take effect immediately.

APPROVED—The 12th day of December, A. D. 1980.

DICK THORNBURGH