

No. 1990-160

AN ACT

HB 1946

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 interpretation and for the quota on the issuance of distributors licenses and retail licenses; providing for price changes for malt and brewed beverages; further providing for privately-owned public golf courses; providing that patrons be required to leave licensed premises at a certain time; authorizing the serving of food after the hour to cease serving liquor or malt or brewed beverages has arrived; prohibiting the consumption of liquor or malt or brewed beverages while tending bar or otherwise serving such beverages; and further providing for administrative law judges, licenses and licensing procedures.

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

Section 1. Sections 104(c), (d) and (e), 212(c) and (h), 402, 433 and 437(f) 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), are amended to read:

Section 104. Interpretation of Act.—* * *

(c) Except as otherwise expressly provided, the purpose of this act is to prohibit the manufacture of and transactions in liquor, alcohol and malt or brewed beverages which take place in this Commonwealth, except by and under the control of the board as herein specifically provided, and every section and provision of the act shall be construed accordingly; *to provide a structure in this Commonwealth for a distribution system, including the establishment of Pennsylvania liquor stores and licensing of importing distributors and distributors; and to preserve manufacturers of liquor and alcohol and malt and brewed beverages selling those products within this Commonwealth.* The provisions of this act dealing with the manufacture, importation, sale, *distribution* and disposition of liquor, alcohol and malt or brewed beverages within the Commonwealth through the instrumentality of the board, *licensees* and otherwise, provide the means by which such control shall be made effective. This act shall not be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of this Commonwealth.

(d) The provisions of this act are intended to create a system for distribution that shall include the fixing of prices for liquor and alcohol and controls placed on prices for malt and brewed beverages and which shall be construed as integral to the preservation of the system, without which the Commonwealth's control of the sale of liquor and alcohol and malt and brewed beverages would not be possible.

[(d)] (e) Any reference in this act to the provisions of law on any subject shall apply to statutes becoming effective after the effective date of this act as well as to those then in existence.

[(e)] (f) Section headings shall not be taken to govern or limit the scope of the sections of this act. The singular shall include the plural and the masculine shall include the feminine and the neuter.

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) Nothing in this section or this act shall be construed or intended to change or affect the terms and conditions of employment or the employment security of hearing examiners employed by the board on the effective date of this section.]

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 **[may] shall** provide for the holding of such hearings by **[examiners learned in the law, to be appointed by the Governor, who shall not be subject to the "Civil Service Act." Such examiners]** *administrative law judges, who 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 **[hearing officer] administrative law judge** thereof shall give appropriate evidentiary weight to any testimony of such residents given at the hearing.

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 Commonwealth 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 a hearing before **[a hearing examiner to the licensee] an administrative law judge**. 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 437. Prohibitions Against the Grant of Licenses.—* * *

(f) No new distributor's or importing distributor's license shall hereafter be granted by the board in any county of the Commonwealth where the combined number of distributor and importing distributor licenses exceeds one license for each **[fifteen] thirty** thousand inhabitants of the county in which the license is to be issued: Provided, That a combined total of five such licenses may be granted in any county of the Commonwealth.

Nothing in this subsection shall be construed as denying the right of the board to renew or to transfer existing distributors' or importing distributors' licenses or to exchange a distributor's license for an importing distributor's license or to exchange an importing distributor's license for a distributor's license, upon adjustment of the applicable fee, notwithstanding that the number of such licensed places in the county shall exceed the limitation hereinbefore prescribed: Provided, That no distributor's license or importing distributor's license shall be transferred from one county to another county so long as the quota is filled in the county to which the license is proposed to be transferred.

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

Section 447. Price Changes of Malt and Brewed Beverages.—
(a) (1) The purpose of this section is to regulate the manner in which prices of malt or brewed beverages is changed by the manufacturers, import-

ing distributors and other distributors and to provide for the retention and the furnishing of records of price changes by such manufacturers, importing distributors and distributors.

(2) Any manufacturer, importing distributor or distributor who reduces the price on any package of any brand of malt or brewed beverages sold for resale within this Commonwealth may further reduce the price at any time, but any reduction shall continue in full force and effect for at least one hundred eighty days from the date on which the last such reduced price becomes effective, except for the meeting of competition as set forth in subsection (b). However, such reduced price may be increased during such one hundred eighty-day period to reflect any tax increase on malt or brewed beverages.

(3) If a manufacturer, importing distributor or distributor of malt or brewed beverages lowers the wholesale price on any package of any brand of malt or brewed beverages to one importing distributor or distributor or retail licensee within this Commonwealth, the manufacturer, importing distributor or distributor shall lower the wholesale price on such package of such brand offered or sold to all other importing distributors or distributors or retail licensees within this Commonwealth by a like amount. Any importing distributor or distributor who lowers the wholesale price on any package of any brand of malt or brewed beverages shall file a notice of the lowered price with the Commonwealth no later than seven days of such change and retain a record of the lowered price for at least two years from the date of filing. If such manufacturer, importing distributor or distributor, having lowered the wholesale price on a package of a brand pursuant to this section, subsequently raises the wholesale price on such package of such brand to one importing distributor or distributor or retail licensee within this Commonwealth, such manufacturer, importing distributor or distributor shall raise the wholesale price on such package of such brand offered or sold to all other importing distributors or distributors or retail licensees within this Commonwealth by a like amount.

(4) No importing distributor or distributor shall be required by any manufacturer or importing distributor to reduce the resale price of any package of any brand of malt or brewed beverages by an amount greater than the amount by which such manufacturer or importing distributor has reduced the wholesale price on such package of such brand to such importing distributor or distributor.

(5) Every importing distributor and distributor receiving a price reduction on any package of any brand of malt or brewed beverages pursuant to this section shall reduce his price by a like amount to all classes of customers.

(6) Manufacturers of malt or brewed beverages shall notify importing distributors and distributors, in writing, of any price reductions, prices on newly introduced brand or packages and subsequent increases after expiration of one hundred eighty days, if any, at least fifteen days in advance of such price changes.

(b) If a manufacturer, importing distributor or distributor has reduced the wholesale price on any package of any brand of malt or brewed beverage

ages, any other manufacturer, importing distributor or distributor may reduce the wholesale price on the same or similar package of such brand in order to meet competition. Such price reduction shall be no greater than the price reduction being met. All such price reductions to meet competition shall continue in full force and effect for the balance of the one hundred eighty-day period during which the price reduction being met is required to remain in full force and effect.

(c) Notwithstanding any other provision of this section, the board shall have the authority, upon application by a manufacturer, importing distributor or distributor, to permit such manufacturer, importing distributor or distributor to change the price within a time period of less than one hundred eighty days from when the price went into effect upon an appropriate showing that market conditions warrant a change in price.

Section 3. Sections 461(a) and 464 of the act 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] three thousand** inhabitants in any municipality, exclusive of licenses granted to airport restaurants, municipal golf courses, hotels, privately-owned public golf courses, as defined in this section, and clubs; but at least one such license may be granted in each municipality and in each part of a municipality where such municipality is split so that each part thereof is separated by another municipality, except in municipalities where the electors have voted against the granting of any retail licenses and except in that part of a split municipality where the electors have voted against the granting of any retail licenses. Nothing contained in this section shall be construed as denying the right to the board to renew or to transfer existing retail licenses of any class notwithstanding that the number of such licensed places in a municipality shall exceed the limitation hereinbefore prescribed; but where such number exceeds the limitation prescribed by this section, no new license, except for hotels, municipal golf courses, airport restaurants, privately-owned public golf courses and privately-owned private golf course licensees, as defined in this section, shall be granted so long as said limitation is exceeded.

* * *

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 **[a hearing examiner designated by the board] an administrative law judge**. At such hearing, the board shall present its reasons for its refusal or withholding of license, renewal or trans-

fer 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 [examiner] *administrative law judge* shall thereafter *make a report, including the judge's recommendation*, to the board [upon such hearing] *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 4. The act is amended by adding a section to read:

Section 472.4. Privately-Owned Public Golf Courses.—(a) *Any privately-owned public golf course licensee may, upon application to and the approval of the board, contract with a concessionaire to operate a restaurant or provide food service and, in the case of a restaurant liquor licensee, sell liquor and malt and brewed beverages or, in the case of a malt and brewed beverage dispenser licensee, sell malt and brewed beverages pursuant to the provisions of this act pertaining to such licensees.*

(b) *The board shall approve the application of any privately-owned public golf course licensee to contract with a concessionaire pursuant to subsection (a) upon being satisfied that the concessionaire is of good repute and financially responsible.*

Section 5. Section 493 of the act 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—

* * *

(28) Consumption of Liquor or Malt or Brewed Beverages While Tending Bar. For any licensee, his servants, agents or employes, to consume liquor or malt or brewed beverages while tending bar or otherwise serving liquor or malt or brewed beverages. No action shall be taken against a licensee under this clause unless the licensee is the individual consuming liquor or malt or brewed beverages in violation of this clause.

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

Section 499. Premises to be Vacated by Patrons.—(a) Except as provided for in subsection (b), 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.

(b) A licensee may serve food between the hours of two o'clock antemeridian and seven o'clock antemeridian 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).

(c) Any owner of licensed premises 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 7. Section 507 of the act is 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 **[the board, a member thereof, or] an [examiner designated by the board] administrative law judge.**

(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 wit-

nesses 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 [examiner] *administrative law judge* shall thereafter *make a* report, *including the judge's recommendation*, to the board *in each case*. The board shall thereafter grant or refuse the license or renewal thereof.

(c) Hearings and adjudications pursuant to this section shall be in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

Section 8. By November 13, 1991, the Pennsylvania Liquor Control Board shall deposit with the Legislative Reference Bureau a notice explaining the implementation of this act.

Section 9. Upon approval of the Pennsylvania Liquor Control Board, equipment, materials and funds utilized in connection with the functions of hearing examiners are transferred to the Office of Administrative Law Judge.

Section 10. Hearing examiners shall have 30 days following the effective date of this section to complete work on hearings conducted prior to the effective date of this act.

Section 11. This act shall take effect as follows:

(1) Sections 1 (section 104), 2 (section 447) and this section shall take effect immediately.

(2) Sections 1 (sections 212, 402 and 433), 3 (section 464), 7 (section 507), 9 and 10 shall take effect June 30, 1992.

(3) The remainder of this act shall take effect in 60 days.

APPROVED—The 7th day of December, A. D. 1990.

ROBERT P. CASEY