

No. 1998-25

## AN ACT

HB 985

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 liquor licensees, for special occasion permits, for certain performing arts facilities, for stadium or arena permits, for breweries, for local options, for unlawful acts relative to malt or brewed beverages, for unlawful acts relative to liquor, malt and brewed beverages and licensees and for nuisances and injunctions.

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

Section 1. Section 406(a) 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 a paragraph to read:

Section 406. Sales by Liquor Licensees; Restrictions.—(a) \* \* \*

*(7) Notwithstanding any provision of this act, on the Sunday on which the sporting event commonly referred to as the "Super Bowl" is conducted, licensees who do not possess the special annual permit provided for in paragraph (3), their servants, agents or employes may sell liquor and malt or brewed beverages on such Sunday after one o'clock postmeridian and until two o'clock antemeridian of the following day.*

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Section 2. Section 408.4(a) of the act, amended December 20, 1996 (P.L.1523, No.199), 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, nonprofit agricultural association in existence for at least ten years, 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] *one* 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] six** 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.] during a calendar year.** 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 or in an incorporated town 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."

\* \* \*

Section 3. Sections 408.6 heading and (a) and 433.1(a) of the act, amended May 31, 1996 (P.L.312, No.49), are amended to read:

Section 408.6. Performing Arts Facilities in Second Class A Cities, Third Class Cities, *Boroughs* and Townships of the Second Class Located in Fourth Class Counties.—(a) The board is authorized to issue a restaurant liquor license to a nonprofit corporation or to a concessionaire selected by such nonprofit corporation in any city of the second class A **[or]**, any city of the third class **or any borough** 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 nonprofit performing arts facility or any other premises utilized as a nonprofit performing arts facility where there is an available seating capacity within the premises of six hundred fifty 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.**

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Section 433.1. Stadium or Arena Permits.—(a) The board is hereby authorized to issue, in cities of the first, second and third class, in counties of the third class **[and]**, in school districts in counties of the third class **and in townships of the second class in counties of the fifth class**, special permits allowing the holders thereof to make retail sales of malt or brewed beverages in shatterproof containers at all events on premises principally utilized for competition of professional and amateur athletes and other types of entertainment having an available seating capacity of; (1) twelve thousand or more in cities of the first and second class; (2) four thousand or more and owned by the county or the city in cities of the third class; (3) four thousand two hundred or more and owned by counties of the third class; **[and]** (4) two thousand five hundred or more in school districts in counties of the third class; **and (5) five thousand or more in townships of the second class in counties of the fifth class:** **Provided, however, That in cities of the second class this section shall be applicable only to premises owned, leased or operated by any authority created under the act of July 29, 1953 (P.L.1034,**

No.270), known as the "Public Auditorium Authorities Law." Such sales may be made only to adults and only on days when the premises are so used and only during the period from one hour before the start of and ending one-half hour after the close of the event on the premises: Provided, however, That in school districts in counties of the third class sales may be made only during professional athletic competition.

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Section 4. Section 446(2) of the act is amended to read:

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

\* \* \*

(2) Operate a restaurant or brewery pub on the licensed premises under such conditions and regulations as the board may enforce[.]: ***Provided, however, That sales on Sunday may be made irrespective of the volume of food sales if the licensed premises are at a stadium or arena location.***

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Section 5. Section 472(a) of the act, amended May 31, 1996 (P.L.312, No.49), is amended to read:

Section 472. Local Option.—(a) In any municipality or any part of a municipality where such municipality is split so that each part thereof is separated by another municipality, an election may be held, subject to subsection (c), on the date of the primary election immediately preceding any municipal election, but not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to hotels, restaurants and clubs, not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to privately-owned private golf courses or to privately-owned public golf courses, not oftener than once in four years, to determine the will of the electors with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years, to determine the will of the electors with respect to granting of licenses to wholesale distributors and importing distributors, not more than once in two years, to determine the will of the electors with respect to the granting of club liquor licenses or club retail dispenser licenses to incorporated units of national veterans' organizations, ***not oftener than once in two years to determine the will of the electors with respect to the granting of special occasion permits to qualified organizations***, or not more than once in four years, to determine the will of the electors with respect to the establishment, operation and maintenance by the board of Pennsylvania liquor stores, within the limits of such municipality or part of a split municipality, under the provisions of this act: Provided, however, Where an election shall have been held at the primary preceding a municipal election in any year, another election may be held under the provisions of this act at the primary occurring the fourth year after such prior election: And provided further, That an election on the question of establishing and operating a State liquor store shall be initiated only in those municipalities, or that part of a split municipality that shall have

voted against the granting of liquor licenses; and that an election on the question of granting wholesale distributor and importing distributor licenses shall be initiated only in those municipalities or parts of split municipalities that shall have at a previous election voted against the granting of dispenser's licenses. Whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in the municipality or part of a split municipality at the last preceding general election shall file a petition with the county board of elections of the county for a referendum on the question of granting any of said classes of licenses or the establishment of Pennsylvania liquor stores, the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at the primary immediately preceding the municipal election. Separate petitions must be filed for each question to be voted on. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions, insofar as such provisions are applicable.

When the question is in respect to the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses  
for the sale of liquor in ..... Yes  
of ..... ? No

When the question is in respect to the granting of liquor licenses, for privately-owned private golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for  
privately-owned private golf courses for the sale  
of liquor in ..... by..... Yes  
of ..... ? No

When the question is in respect to the granting of liquor licenses, for privately-owned public golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for  
privately-owned public golf courses for the sale  
of liquor in ..... by..... Yes  
of ..... ? No

When the question is in respect to the granting of licenses to retail dispensers of malt and brewed beverages, it shall be in the following form:

Do you favor the granting of malt and brewed  
beverage retail dispenser licenses for  
consumption on premises where sold in the ..... Yes  
of ..... ? No

When the question is in respect to the granting of licenses to wholesale distributors of malt or brewed beverages and importing distributors, it shall be in the following form:

Do you favor the granting of malt and brewed  
beverage wholesale distributor's and importing  
distributor's licenses not for consumption on

premises where sold in the . . . . . Yes  
of . . . . . ? No

When the question is in respect to the granting of club liquor licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club liquor licenses to incorporated units of national veterans' organizations in the . . . . . Yes  
of . . . . . ? No

When the question is in respect to the granting of club retail dispenser licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club retail dispenser licenses to incorporated units of national veterans' organizations in the . . . . . Yes  
of . . . . . ? No

*When the question is in respect to the granting of special occasion permits to qualified organizations, it shall be in the following form:*

*Do you favor the granting of special occasion permits to qualified organizations in the . . . . . Yes  
of . . . . . ? No*

When the question is in respect to the establishment, operation and maintenance of Pennsylvania liquor stores it shall be in the following form:

Do you favor the establishment, operation and maintenance of Pennsylvania liquor stores in the . . . . . Yes  
of . . . . . ? No

In case of a tie vote, the status quo shall obtain. If a majority of the voting electors on any such question vote "yes," then liquor licenses shall be granted by the board to hotels, restaurants and clubs, or liquor licenses shall be granted by the board to privately-owned private golf courses or to privately-owned public golf courses, or malt and brewed beverage retail dispenser licenses or wholesale distributor's and importing distributor's license for the sale of malt or brewed beverages shall be granted by the board, or club liquor licenses or club retail dispenser licenses shall be granted by the board to incorporated units of national veterans' organizations, *or special occasion permits may be issued to qualified organizations*, or the board may establish, operate and maintain Pennsylvania liquor stores, as the case may be, in such municipality or part of a split municipality, as provided by this act; but if a majority of the electors voting on any such question vote "no," then the board shall have no power to grant or to renew upon their expiration any licenses of the class so voted upon in such municipality or part of a split municipality; or if the negative vote is on the question in respect to the establishment, operation and maintenance of Pennsylvania liquor stores, the board shall not open and operate a Pennsylvania liquor store in such municipality or part of

a split municipality, nor continue to operate a then existing Pennsylvania liquor store in the municipality or part of a split municipality for more than two years thereafter or after the expiration of the term of the lease on the premises occupied by such store, whichever period is less, unless and until at a later election a majority of the voting electors vote "yes" on such question.

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Section 6. Section 492(1) of the act is amended to read:

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

It shall be unlawful—

(1) Manufacturing Without License. **[For] *Except as provided herein, for*** any person, to manufacture malt or brewed beverages, unless such person holds a valid manufacturer's license for such purpose issued by the board. ***Malt or brewed beverages may be produced by any person without a license if such malt or brewed beverages are produced not for sale and total production does not exceed two hundred gallons per calendar year. Malt or brewed beverages produced in accordance with this paragraph may be used at organized affairs, exhibitions, competitions, contests, tastings or judging provided it is not sold or offered for sale.***

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Section 7. Section 493(2) and (10) of the act, amended April 29, 1994 (P.L.212, No.30) and May 31, 1996 (P.L.312, No.49), are amended 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. 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. 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.

\* \* \*

(10) Entertainment on Licensed Premises (Except Clubs); Permits; Fees. For any licensee, his servants, agents or employes, except club licensees, to permit in any licensed premises or in any place operated in connection therewith, dancing, theatricals or floor shows of any sort, or moving pictures other than television, or such as are exhibited through machines operated by patrons by the deposit of coins, which project pictures on a screen not exceeding in size twenty-four by thirty inches and which forms part of the machine, unless the licensee shall first have obtained from the board a special permit to provide such entertainment, or for any licensee, under any circumstances, to permit in any licensed premises any lewd, immoral or improper entertainment, regardless of whether a permit to provide entertainment has been obtained or not. *The special permit may be used only during the hours when the sale of liquor or malt or brewed beverages is permitted, and between eleven o'clock antemeridian on Sunday and two o'clock antemeridian on the following Monday, regardless of whether the licensee possesses a Sunday sales permit.* The board shall have power to provide for the issue of such special permits, and to collect an annual fee for such permits 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." All such fees shall be paid into the State Stores Fund. No such permit shall be issued in any municipality which, by ordinance, prohibits amusements in licensed places. Any violation of this clause shall, in addition to the penalty herein provided, subject the licensee to suspension or revocation of his permit and his license.

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Section 8. Section 611(b) of the act is amended to read:

## Section 611. Nuisances; Actions To Enjoin.—\* \* \*

(b) An action to enjoin any nuisance defined in this act may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General, *by the Pennsylvania State Police through its Bureau of Liquor Control Enforcement, by the municipality wherein the establishment is located*, by the district attorney of the proper county or by a person who resides or has a place of business within five hundred feet of the location of the alleged nuisance. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases within the county in which the offense occurs. If it is made to appear, by affidavit or otherwise, to the satisfaction of the court that such nuisance exists, a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the proceedings. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquids, beverages or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings brought in the name of the Commonwealth by the Attorney General, *the Pennsylvania State Police through its Bureau of Liquor Control Enforcement, the municipality where the establishment is located* or the district attorney *of the proper county*. Where such proceedings are brought by a person, the court, upon application of the defendant and prior to any injunction being issued, may direct the plaintiff to post bond in such amount as the court may find to be reasonable and sufficient. It shall not be necessary for the court to find the property involved was being unlawfully used, as aforesaid, at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor, alcohol or malt or brewed beverage shall be manufactured, sold, offered for sale, transported, bartered or furnished, or stored in bond, or stored for hire in such room, house, building, structure, boat, vehicle, or place, or any part thereof.

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Section 9. This act shall take effect immediately.

APPROVED—The 18th day of February, A.D. 1998.

THOMAS J. RIDGE