

No. 2002-10

AN ACT

HB 1519

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," adding definitions; further providing for terms of members of the board and for special occasion permits; providing for shipment of wine into the Commonwealth; further providing for general powers of the board, for sales by Pennsylvania liquor stores, for applications for hotel, restaurant and club liquor licenses, for public venue license, for performing arts facility license; providing for a continuing care retirement community retail license not subject to the quota system and for malt and brewed beverages alternating brewers' licenses; further providing for application for distributors', importing distributors' and retail dispensers' licenses, for limiting number of retail licenses to be issued in each county, for places of amusement not to be licensed and penalty, for licenses not assignable and transfers, for revocation and suspension of licenses and fines, for local option, for clubs, for privately owned public golf courses, for establishments proximate to interstate highways not to be licensed, for applicants to provide State tax identification numbers and statement of State tax status and waiver of confidentiality of information in the possession of the Department of Revenue and other departments and review of State tax status, for unlawful acts relative to liquor, malt and brewed beverages and licensees, for identification cards and licensees and State liquor store employees saved from prosecution, for reporting of worthless checks, for unlawful advertising and for premises to be vacated by patrons; and making an editorial change.

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

Section 1. The definitions of "eating place," "public venue" and "restaurant" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and amended June 29, 1987 (P.L.32, No.14) and amended December 20, 2000 (P.L.992, No.141), are amended and the section is amended by adding definitions to read:

Section 102. Definitions.—The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

* * *

"Alternating brewer" shall mean any person, association, corporation or other business entity licensed by the board to produce malt or brewed beverages at premises that are licensed by another entity under a Pennsylvania manufacturer's license.

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“Automobile racetrack” shall mean a track used principally for holding automobile races which has a seating capacity in excess of twenty-five thousand.

* * *

“Combination package” shall mean a package consisting of liquor or alcohol and a nonliquor or nonalcohol item as packaged by the manufacturer or its representative.

* * *

“Continuing care retirement community” shall mean the building or complex operated by a nonprofit entity incorporated under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations) which primarily houses persons over the age of sixty-two. At least one hundred persons residing in the building or complex must be over the age of sixty-two.

* * *

“Direct shipper” shall mean a person outside this Commonwealth who obtains a license from the board to accept orders placed for wine from within this Commonwealth by the Internet and who ships or facilitates in any way shipment of wine by a delivery agent or common carrier to a Pennsylvania Liquor Store.

* * *

“Eating place” shall mean a premise where food is regularly and customarily prepared and sold, having a total area of not less than three hundred square feet available to the public in one or more rooms, other than living quarters, and equipped with tables and chairs, including bar seats, accommodating thirty persons at one time.

* * *

“Management company” shall mean any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises.

* * *

“Public venue” shall mean a stadium, arena, convention center, museum, amphitheater or similar structure. If the public venue is a cruise terminal owned or leased by a port authority created under the act of June 12, 1931 (P.L.575, No.200), entitled “An act providing for joint action by Pennsylvania and New Jersey in the development of the ports on the lower Delaware River, and the improvement of the facilities for transportation across the river; authorizing the Governor, for these purposes, to enter into an agreement with New Jersey; creating The Delaware River Joint Commission and specifying the powers and duties thereof, including the power to finance projects by the issuance of revenue bonds; transferring to the new commission all the powers of the Delaware River Bridge Joint Commission; and making an appropriation,” it shall have no permanent seating requirement. If the public venue is an open-air amphitheater owned by a port authority

created under the act of December 6, 1972 (P.L.1392, No.298), known as the "Third Class City Port Authority Act," it shall have no permanent seating requirement. If the public venue is owned by a political subdivision, a municipal authority, the Commonwealth, an authority created under the act of July 29, 1953 (P.L.1034, No.270), known as the "Public Auditorium Authorities Law," an authority created under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," an art museum established under the authority of the act of April 6, 1791 (3 Sm.L.20, No.1536), entitled "An act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law," or an authority created under Article XXIII (n) or (o) of the act of August 9, 1955 (P.L.323, No.130), known as "The County Code," it shall have *permanent* seating for at least one thousand (1,000) people; otherwise, it shall have *permanent* seating for at least ~~[five thousand (5,000)]~~ *three thousand (3,000)* people. The term shall also mean any regional history center, multipurpose cultural and science facility or museum, regardless of owner and seating capacity, that has a floor area of at least sixty thousand (60,000) square feet in one building.

* * *

"Restaurant" shall mean a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs, *including bar seats*, accommodating at least thirty persons at one time.

* * *

Section 1.1. Section 201 of the act is amended to read:

Section 201. Appointment of Members; Terms; Salaries.—An independent administrative board to be known as the "Pennsylvania Liquor Control Board" is hereby created. The board shall consist of three members to be appointed by the Governor by and with the advice and consent of two-thirds of all the members of the Senate, not more than two of whom shall be from the same political party as the Governor. Of the members first appointed after the effective date of this amendatory act, one member shall serve a term of three years, one member shall serve a term of four years, and one member shall serve a term of five years. Subsequent terms shall be for four years, ending on the third Tuesday in May. **[No member upon the expiration of his term shall continue to hold office until his successor shall be duly appointed and qualified.]** *A member may continue to hold office for a period not to exceed six months beyond the expiration of that member's term if a successor to that member has not been duly appointed and qualified according to law.* Each of the members shall receive an annual salary [of forty thousand dollars (\$40,000), except the chairman, who shall receive an annual salary of forty-two thousand dollars

(\$42,000).] *pursuant to the provisions of the act of September 30, 1983 (P.L.160, No.39), known as the "Public Official Compensation Law."*

Section 2. Section 207 of the act is amended by adding a subsection to read:

Section 207. General Powers of Board.—Under this act, the board shall have the power and its duty shall be:

* * *

(k) To issue grants to various entities for alcohol education and prevention efforts.

Section 3. Section 305(a) of the act is amended to read:

Section 305. Sales by Pennsylvania Liquor Stores.—(a) Every Pennsylvania Liquor Store shall keep in stock for sale such classes, varieties and brands of liquor and alcohol as the board shall prescribe. *Every Pennsylvania Liquor Store shall be authorized to sell combination packages.* If any person shall desire to purchase any class, variety or brand of liquor or alcohol which any such store does not have in stock, it shall be the duty of such store immediately to order the same upon the payment of a reasonable deposit by the purchaser in such proportion of the approximate cost of the order as shall be prescribed by the regulations of the board. No purchaser may be required to purchase more than two bottles or containers of the product, provided that such product is available through the State store system. The customer shall be notified immediately upon the arrival of the goods.

In computing the retail price of such special orders for liquor or alcohol, the board shall not include the cost of freight or shipping before applying the mark-up and taxes but shall add the freight or shipping charges to the price after the mark-up and taxes have been applied.

Unless the customer pays for and accepts delivery of any such special order within ten days after notice of arrival, the store may place it in stock for general sale and the customer's deposit shall be forfeited.

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Section 4. Section 403(a) of the act, amended December 21, 1998 (P.L.1202, No.155), is amended to read:

Section 403. Applications for Hotel, Restaurant and Club Liquor Licenses.—(a) Every applicant for a hotel liquor license, restaurant liquor license or club liquor license or for the transfer of an existing license to another premises not then licensed *or to another person* shall file a written application with the board in such form and containing such information as the board shall from time to time prescribe, which shall be accompanied by a filing fee and an annual license 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." Every such application shall contain a description of that part of the hotel, restaurant or club for which the applicant desires a license and shall set forth such other material information, description or plan of that part of the hotel, restaurant or club where it is proposed to keep and sell

liquor as may be required by the regulations of the board. The descriptions, information and plans referred to in this subsection shall show the hotel, restaurant, club, or the proposed location for the construction of a hotel, restaurant or club, at the time the application is made, and shall show any alterations proposed to be made thereto, or the new building proposed to be constructed after the approval by the board of the application for a license or for the transfer of an existing license to another premises not then licensed *or to another person*. No physical alterations, improvements or changes shall be required to be made to any hotel, restaurant or club, nor shall any new building for any such purpose, be required to be constructed until approval of the application for license or for the transfer of an existing license to another premises not then licensed *or to another person* by the board. After approval of the application, the licensee shall make the physical alterations, improvements and changes to the licensed premises, or shall construct the new building in the manner specified by the board at the time of approval, and the licensee shall not transact any business under the license until the board has approved the completed physical alterations, improvements and changes to the licensed premises, or the completed construction of the new building as conforming to the specifications required by the board at the time of issuance or transfer of the license, and is satisfied that the establishment is a restaurant, hotel or club as defined by this act. The board may require that all such alterations or construction or conformity to definition be completed within six months from the time of issuance or transfer of the license. Failure to comply with these requirements shall be considered cause for revocation of the license. No such license shall be transferable between the time of issuance or transfer of the license and the approval of the completed alterations or construction by the board and full compliance by the licensee with the requirements of this act, except in the case of death of the licensee prior to full compliance with all of the aforementioned requirements, *unless full compliance is impossible for reasons beyond the licensee's control*, in which event, the license may be transferred by the board as provided in this act.

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Section 5. Section 408.4(a) of the act, amended November 10, 1999 (P.L.514, No.47), 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 organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to protect the architectural heritage of boroughs and which has been recognized as such by a municipal resolution*, unit of a nationally chartered club which has been issued a club liquor license, 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 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 six consecutive or nonconsecutive days 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 or to an arts council or to a nonprofit corporation that operates an arts facility or museum in a city of the third class in a county of the fourth class for a period of not more than six nonconsecutive or ten consecutive days at the prescribed fee for special occasion permits under section 614-A of "The Administrative Code of 1929."

* * *

Section 6. Sections 412(b), (d), (e) and (f) and 413(d), (e) and (g) of the act, added December 20, 2000 (P.L.992, No.141), are amended to read:

Section 412. Public Venue License.—* * *

(b) An application for a restaurant liquor license under this section may be made by the owner of the public venue, **[a nonprofit corporation operating] the operator** of the public venue or by a concessionaire designated by the governing body of either the owner of the public venue or the **[nonprofit corporation] operator**. The application and issuance of the license is subject to sections 403 and 404 unless otherwise stated. The licensing period shall be as set forth by the board under section 402. The application, renewal and filing fees shall be as prescribed in section 614-A(25) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." **[For the purposes of this section, a nonprofit corporation is an entity incorporated under the nonprofit corporation laws for the purpose of benefiting the public and not for the purpose of benefiting its members.]**

* * *

(d) Licenses under this section shall expire upon: (1) revocation by an administrative law judge under section 471; (2) nonrenewal by the board under section 470; (3) nonrenewal of the license by the license holder; (4) termination of the contract between the owner of the public venue and its concessionaire; or (5) termination of the contract between **[a nonprofit corporation] an operator** and its concessionaire.

(e) The board may issue a license under this section at any time to a new applicant even if the previous license had: (1) been revoked by an administrative law judge under section 471; (2) not been renewed by the board under section 470; (3) not been renewed by the license holder; (4) expired because of the termination of the contract between the owner of the

public venue and its concessionaire; or (5) expired because of the termination of the contract between [the nonprofit corporation] *an operator* and its concessionaire.

(f) Licenses issued under this section are to be considered restaurant liquor licenses. However, the following additional restrictions and privileges apply:

(1) Sales may only be made one hour before, during and one hour after any athletic performance, performing arts event, trade show, convention, banquet or any other performance at the facility; however, sales may not be made from two o'clock antemeridian to seven o'clock antemeridian. In addition, sales may not occur prior to eleven o'clock antemeridian on Sundays or seven o'clock antemeridian on Mondays. Notwithstanding this section, facilities that had been licensed under former sections 408.9 and 408.14 may sell liquor and/or malt or brewed beverages anytime except from two o'clock antemeridian to seven o'clock antemeridian or prior to eleven o'clock antemeridian on Sundays or seven o'clock antemeridian on Mondays, regardless of whether there is a performance at the facility.

(2) Sales of alcoholic beverages before, during and after all professional and amateur athletic events on the premises shall be limited to sales of malt or brewed beverages in shatterproof containers. Sales of alcoholic beverages before, during and after performing arts events or other entertainment events may consist of liquor or malt or brewed beverages in shatterproof containers. Sales during trade shows, conventions, banquets or at other events, or sales made in the club seats or at a restaurant facility, may consist of liquor or malt or brewed beverages in any type of container; however, any liquor or malt or brewed beverages sold in the club seats or restaurant facility must remain in the club seating level or restaurant facility. For purposes of this section, a club seat is any seating located on the designated club seating level and partitioned from general seating by a wall, divider, partial wall or railing. The club seating level must not be accessible by the general public. The board's records shall clearly delineate where the sale of liquor or malt or brewed beverages in any type of container may occur.

(3) Sales of malt or brewed beverages for off-premises consumption are prohibited.

(4) Licenses issued under this section shall not be subject to: (i) the proximity provisions of sections 402 and 404; (ii) the quota restrictions of section 461; [(iii) the provisions of section 463;] (iv) the provisions of section 493(10) except as they relate to lewd, immoral or improper entertainment; and (v) the prohibition against minors frequenting as described in section 493(14). In addition, licenses issued under this section shall not be subject to the provisions defining "restaurant" in section 102.

Section 413. Performing Arts Facility License.—* * *

(d) Licenses under this section shall expire upon: (1) revocation by an administrative law judge under section 471; (2) nonrenewal by the board under section 470; (3) nonrenewal of the license by the license holder; *or*

(4) termination of the contract between the [owner] *operator* of the [public venue] *performing arts facilities* and its concessionaire[; or (5) termination of the contract between a corporation and its concessionaire].

(e) The board may issue a license under this section at any time to a new applicant even if the previous license had: (1) been revoked by an administrative law judge under section 471; (2) not been renewed by the board under section 470; (3) not been renewed by the license holder; or (4) expired because of the termination of the contract between the [owner] *operator* of the [public venue] *performing arts facilities* and its concessionaire[; or (5) expired because of the termination of the contract between the corporation and its concessionaire].

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(g) Licenses issued under this section shall not be subject to: (1) the proximity provisions of sections 402 and 404; (2) the quota restrictions of section 461; [(3) the provisions of section 463;] (4) the provisions of section 493(10) except as they relate to lewd, immoral or improper entertainment; and (5) the prohibitions against minors frequenting as described in section 493(14). In addition, licenses issued under this section shall not be subject to the provisions defining "restaurant" in section 102.

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

Section 414. Continuing Care Retirement Community Retail Licenses.—(a) *The board is authorized to issue a restaurant liquor license to a continuing care retirement community, as that term is defined in this act, or its designated concessionaire. The licensing period shall be established under section 402. The application and issuance of the license is subject to sections 403 and 404 unless otherwise stated. The application, renewal and filing fee shall be as prescribed in section 614-A(1) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."*

(b) *Licenses issued under this section are restaurant liquor licenses for all purposes except as provided herein. However, the following additional restrictions and privileges apply:*

(1) *Licenses issued under this section are not subject to the quota restrictions of section 461.*

(2) *Sales of liquor and malt or brewed beverages may not occur from two o'clock antemeridian to seven o'clock antemeridian. In addition, sales may not occur prior to one o'clock postmeridian or after ten o'clock postmeridian on Sunday.*

(3) *Liquor and malt or brewed beverages sold or furnished by the licensee may be possessed anywhere within the continuing care retirement community regardless of whether that portion of the premises is licensed. However, no liquor or malt or brewed beverages sold or*

furnished by the licensee may be taken beyond the confines of the continuing care retirement community.

(4) Sales of liquor or malt or brewed beverages may occur in those portions of the premises licensed by the board as well as in rooms that are lived in or used by residents of the continuing care retirement community. Sales of liquor and malt or brewed beverages are limited to residents of the continuing care retirement community and the guests of residents in conjunction with the normal, regularly scheduled dining, entertainment or social activities of the continuing care retirement community.

(5) Licenses issued under this section are not subject to the provisions defining "restaurant" in section 102.

(c) Licenses issued under this section are nontransferable and if issued to a concessionaire shall expire upon the termination of the contract between the continuing care retirement community and the concessionaire.

(d) The board may issue an eating place retail dispenser license to a continuing care retirement community located in a municipality that has voted to allow the issuance of eating place retail dispenser licenses but has not voted to allow the issuance of restaurant liquor licenses. Eating place retail dispenser licenses issued under this subsection shall be subject to the restrictions and privileges contained in subsections (b) and (c).

Section 431.1. Malt and Brewed Beverages Alternating Brewers' Licenses.—(a) The board shall be authorized to issue an alternating brewer's license to qualified entities. In order to qualify for the alternating brewer's license, the applicant must demonstrate that it holds a Federal brewer's notice registration issued for a premises within this Commonwealth and meet all the qualifications imposed on the holder of a malt and brewed beverage manufacturer's license.

(b) The holder of an alternating brewer's license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt or brewed beverage manufacturer's license except as set forth in this section.

(c) The holder of an alternating brewer's license is not required to maintain separate manufacturing premises; rather, the alternating brewer's license shall be valid at premises that are licensed by another entity under a Pennsylvania manufacturer's license. The holder of an alternating brewer's license shall not be entitled to the limited tax credit available under section 2010 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

(d) Malt and brewed beverages manufactured under the authority of an alternating brewer's license must be distributed in this Commonwealth only through specific importing distributors who shall first have been given distributor rights for such products in designated geographical areas through the distribution system required for out-of-State

manufacturers under section 431(b) as well as all other pertinent sections of this act. The alternating brewer must comply with section 444.

(e) The application, renewal and filing fees for a malt and brewed beverages alternating brewer's license shall be as prescribed in section 614-A(10) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Section 8. Section 436 introductory paragraph and (b) of the act, amended April 29, 1994 (P.L.212, No.30), are amended to read:

Section 436. Application for Distributors', Importing Distributors' and Retail Dispensers' Licenses.—Application for distributors', importing distributors' and retail dispensers' licenses, or for the transfer of an existing license to another premises not then licensed *or to another person*, shall contain or have attached thereto the following information and statements:

* * *

(b) The particular place for which the license is desired and a detailed description thereof. The description, information and plans referred to in this subsection shall show the premises or the proposed location for the construction of the premises at the time the application is made, and shall show any alterations proposed to be made thereto, or the new building proposed to be constructed after the approval by the board of the application for a license, or for the transfer of an existing license to another premises not then licensed *or to another person*. No physical alterations, improvements or changes shall be required to be made to any hotel, eating place or club, nor shall any new building for any such purpose be required to be constructed until approval of the application for license or for the transfer of an existing license to another premises not then licensed *or to another person* by the board. After approval of the application, the licensee shall make the physical alterations, improvements and changes to the licensed premises, or shall construct the new building in the manner specified by the board at the time of approval. The licensee shall not transact any business under the license until the board has approved the completed physical alterations, improvements and changes of the licensed premises or the completed construction of the new building as conforming to the specifications required by the board at the time of issuance or transfer of the license and is satisfied that the premises meet the requirements for a distributor's or importing distributor's license as set forth in this act or that the establishment is an eating place, hotel or club as defined by this act. The board may require that all such alterations or construction or conformity to definition be completed within six months from the time of issuance or transfer of the license. Failure to comply with these requirements shall be considered cause for revocation of the license. No such license shall be transferable between the time of issuance or transfer of the license and the approval of the completed alterations or construction by the board and full compliance by the licensee with the requirements of this act, except in the case of death of the licensee prior to full compliance with all of the

aforementioned requirements, *unless full compliance is impossible for reasons beyond the licensee's control*, in which event the license may be transferred by the board as provided in this act.

Section 9. Section 461(a), (b.1), (b.2), (b.3) and (e.1), amended or added December 20, 2000 (P.L.992, No.141), are amended to read:

Section 461. Limiting Number of Retail Licenses To Be Issued In Each County.—(a) No additional restaurant, eating place retail dispenser or club licenses shall be issued within a county if the total number of restaurant and eating place retail dispenser licenses is greater than one license for each three thousand inhabitants in the county, except the board may issue licenses to public venues, performing arts facilities, *continuing care retirement communities*, airport restaurants, municipal golf courses, hotels, privately-owned private golf courses, privately-owned public golf courses, *racetracks, automobile racetracks, nonprimary pari-mutuel wagering locations* and to any other entity which this act specifically exempts from the limitations provided in this section, and the board may issue a license to a club situated in a borough having a population less than eight thousand inhabitants which is located in a county of the second class A whose application is filed on or before February 28, 2001. *In addition, the board may issue an eating place retail dispenser license for on-premises sales only to the owner or operator of a facility having a minimum of a one-half mile asphalt track and having a permanent seating capacity of at least six thousand people used principally for holding automobile races, regardless of the number of restaurant and eating place retail dispenser licenses already issued in that county.* When determining the number of restaurant and eating place retail dispenser licenses issued in a county for the purposes of this section, licenses exempted from this limitation and club licenses shall not be considered. Inhabitants of dry municipalities shall be considered when determining the population in a county. Licenses shall not be issued or transferred into municipalities where such licenses are prohibited pursuant to local referendum in accordance with section 472. Licenses approved for intermunicipal transfer may not be transferred from the receiving municipality for a period of five years after the date that the licensed premises are operational in the receiving municipality.

(b.1) The board may issue restaurant and eating place retail dispenser licenses and renew licenses issued under this subsection without regard to the quota restrictions set forth in subsection (a) for the purpose of economic development in a municipality under the following conditions:

(1) A license may only be issued under this subsection if the applicant has exhausted reasonable means for obtaining a suitable license within the county.

(2) The proposed licensed premises must be located within either of the following:

(i) A keystone opportunity zone established under the authority of the act of October 6, 1998 (P.L.705, No.92), known as the [**“Pennsylvania Keystone Opportunity Zone Act,”**] **“Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act,”** or an area designated as an enterprise zone by the Department of Community and Economic Development.

(ii) A municipality in which the issuance of a restaurant or eating place retail dispenser license has been approved by the governing body of the municipality for the purpose of local economic development. Upon request for approval of an economic development license by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to acquire an economic development license from the Pennsylvania Liquor Control Board. The governing body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an economic development license. **[The municipality must approve the request unless it finds that doing so]** *If the municipality finds that the issuance of the license would promote economic development, it may approve the request; however, it must refuse the request if it finds that approval of the request would adversely affect the welfare, health, peace and morals of the municipality or its residents.* A decision by the governing body of the municipality to deny the request may be appealed to the court of common pleas in the county in which the municipality is located. A copy of the approval must be submitted with the license application.

(3) The board may issue no more than two licenses total in each county of the first through fourth class and no more than one license total in each county of the fifth through eighth class per calendar year.

(4) An applicant under this subsection shall be required to sell food and nonalcoholic beverages equal to seventy per centum (70%) or more of its combined gross sales of food and alcoholic beverages.

(5) In addition to **renewal and** license fees provided under existing law for the type of license issued, an applicant shall be required to pay an initial application surcharge as follows:

(i) Fifty thousand dollars (\$50,000) if the licensed premises is located in a county of the first through fourth class.

(ii) Twenty-five thousand dollars (\$25,000) if the licensed premises is located in a county of the fifth through eighth class.

(iii) The initial application surcharge **minus a seven hundred dollar (\$700) processing fee** shall be refunded to the applicant if the board refuses to issue a provisional license under subsection (b.2). Otherwise, the initial application surcharge **minus a seven hundred dollar (\$700) processing fee** shall be credited to The State Stores Fund. **The processing fee shall be treated as an application filing fee as prescribed in section 614-A(1)(i) of**

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

(6) A license issued under this subsection and a provisional license issued under subsection (b.2) shall be nontransferable with regard to ownership or location.

(7) An appeal of the board's decision refusing to grant or renew a license under this subsection shall not act as a supersedeas of the decision of the board if the decision is based, in whole or in part, on the licensee's failure to demonstrate that its food and nonalcoholic beverages were at least seventy per centum (70%) of its combined gross sales of food and alcoholic beverages.

(8) A license issued under this subsection may not be validated or renewed unless the licensee can establish that its sale of food and nonalcoholic beverages during the license year immediately preceding application for validation or renewal is equal to seventy per centum (70%) or more of its food and alcoholic beverage sales.

(b.2) Qualified applicants under subsection [(b)] (b.1) shall receive a provisional license for one hundred twenty days, exclusive of periods of safekeeping. After ninety days from the date of issuance, the licensee may file an application for a permanent license. A license shall be issued if the licensee establishes that for ninety consecutive days from the date of initial issue its sales of food and nonalcoholic beverages is equal to at least seventy per centum (70%) of its combined gross sales of food and alcoholic beverages. Licensees shall not be subject to citation by the Enforcement Bureau for a violation of the requirement that food and nonalcoholic beverages equal at least seventy per centum (70%) of the combined gross sales of food and alcoholic beverages during the provisional licensing period.

(b.3) An intermunicipal transfer of a license or issuance of a license for economic development under subsection (b.1)(2)(i) must first be approved by the governing body of the receiving municipality when the total number of existing restaurant liquor licenses and eating place retail dispenser licenses *in the receiving municipality* exceed one license per three thousand inhabitants. Upon request for approval of an intermunicipal transfer of a license or issuance of an economic development license by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer a license into the municipality or acquire an economic development license from the Pennsylvania Liquor Control Board. The governing body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for *an intermunicipal transfer of a license or issuance of* an economic development license. The municipality must approve the request unless it finds that doing so would adversely affect

the welfare, health, peace and morals of the municipality or its residents. A decision by the governing body of the municipality to deny the request may be appealed to the court of common pleas in the county in which the municipality is located. A copy of the approval must be submitted with the license application.

* * *

(e.1) "Privately-owned public golf course" as used in this section shall mean the restaurant facilities at any privately-owned golf course open for public accommodation. *The license may be issued to the operator of the privately-owned public golf course. The license holder may designate a concessionaire to provide food, alcoholic beverage and nonalcoholic beverage service at the restaurant facility.*

* * *

Section 10. Section 463 of the act, amended May 31, 1990 (P.L.224, No.48) and December 20, 2000 (P.L.992, No.141), is amended to read:

[Section 463. Places of Amusement Not To Be Licensed; Penalty.—(a) No license for the sale of liquor or malt or brewed beverages in any quantity shall be granted to the proprietors, lessees, keepers or managers of any theater, circus, museum or other place of amusement, nor shall any house be licensed for the sale of liquor or malt or brewed beverages which has passage or communication to or with any theater, circus, museum or other place of amusement, and any license granted contrary to this act shall be null and void. Nothing contained in this section shall be construed as denying to the board the right to grant a restaurant liquor license regardless of quota restrictions to the owner or operator of:

- (1) a racetrack as defined in section 102 of this act;**
- (2) a nonprimary pari-mutuel wagering location as defined in section 102 of this act; or**
- (3) a restaurant in a building on a plot of ground owned or possessed under lease by a corporation incorporated under the laws of this Commonwealth and used principally by such corporation for holding outdoor sport events wherein such events are held under a license issued as provided by law to such corporation by a department, board or commission of the Commonwealth of Pennsylvania.**

The restaurant liquor license aforementioned shall be subject to all the conditions and restrictions herein applicable to restaurant liquor licenses, except the above prohibition against any passageway or communication between such licensed premises and the place of amusement, and except that nothing contained in this act shall be construed to prohibit the licensed nonprimary pari-mutuel wagering location or the racetrack from providing wagering within the entire licensed premises of the nonprimary pari-mutuel wagering location or the racetrack, and a restaurant liquor license issued for a nonprimary pari-mutuel wagering location or a restaurant liquor license issued for a

racetrack issued subsequent to the enactment of this amendment shall not be transferable.

Nothing contained in this act shall be construed as denying to the board the right to grant a new restaurant liquor license, regardless of quota restrictions, at any time, to the owner or operator of a restaurant in a building or plot of ground having a seating capacity in excess of twenty-five thousand, used principally for holding automobile races.

(a.1) Nothing contained in subsection (a) of this section or in section 102 of this act shall be construed as denying to the board the right to grant a club or restaurant liquor or malt and brewed beverage license to a club incorporated in this Commonwealth which has been in existence less than one year prior to making application under this section or to a restaurant either of which has a clubhouse or restaurant located in a stadium or arena having an available seating capacity of twelve thousand or more and owned and operated by or pursuant to an agreement with any city of the first class or created and operated under and in compliance with the act of July 29, 1953 (P.L.1034), known as the "Public Auditorium Authorities Law," and used principally for events at which athletes compete or other types of performers entertain. The club or restaurant liquor or malt and brewed beverage license aforementioned shall be subject to all the conditions and restrictions applicable to such licenses and licenses for places of amusement, except the above prohibition against any passageway or communication between such licensed premises and the place of amusement.

(a.2) Nothing contained in this act shall be construed to prevent the holder of a hotel, restaurant liquor or malt and brewed beverage license from selling liquor and malt or brewed beverages in a bowling alley, or other recreational areas including, but not limited to, game rooms and video arcade areas of hotels, when no minors are present, unless minors who are present are under proper supervision as defined in section 493, where the restaurant, bowling alley, or other recreational areas including, but not limited to, game rooms and video arcade areas of hotels 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.

(a.3) Nothing contained in subsection (a) or in section 102 shall be construed as denying to the board the right to grant a new retail dispenser license for on-premises sales only, regardless of quota restrictions, to the owner or operator of a facility having a minimum of a one-half mile asphalt track and having a permanent seating capacity of at least six thousand used principally for holding automobile races.

(b) Any proprietor, lessee, keeper or manager of any theater, circus, museum or other place of amusement, or any other person who shall violate the provisions of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of one hundred dollars and to undergo an imprisonment of not less than thirty days.

(c) This section is not applicable to public venues or performing arts facilities licensed under sections 412 and 413.]

Section 11. Section 468(a) of the act is amended by adding a clause to read:

Section 468. Licenses Not Assignable; Transfers.—(a) * * *

(4) In the event the license to be transferred has been ordered to serve a suspension under section 471 and has not served the suspension at the time the board considers the application and all appeals regarding the suspension have been exhausted, the board may require the transferee to serve the suspension as a condition for approval of the transfer. Further, the board may convert the outstanding suspension into a fine and require the transferee to pay the fine as a condition for approval of the transfer. If the board converts the outstanding suspension to a fine, the fine need not comply with the minimum and maximum amounts set forth in section 471 for the underlying citation.

* * *

Section 12. Section 471(b) and (c) of the act, amended December 20, 2000 (P.L.992, No.141), are 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. 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 affirm the decision of the administrative law judge if it is based on substantial evidence; otherwise, the board shall reverse the decision of 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, 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. 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.

(c) *The administrative law judge may consider the licensee's prior citation history when imposing a penalty.* If the violation in question is a third or subsequent violation of this act or Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses), occurring within a period of four years, the administrative law judge shall impose a suspension or revocation.

* * *

Section 13. Section 472(a) of the act, amended December 20, 2000 (P.L.992, No.141), is amended and the section is amended by adding subsections 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, *resort facilities* 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 public venues, to performing arts facilities, *to continuing care retirement communities*, to hotels located on property owned by an accredited college or university, 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 to resort facilities in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

*Do you favor the granting of liquor licenses to resort
facilities for the sale of liquor in the Yes
of ? No*

When the question is in respect to the granting of restaurant liquor licenses for use at public venues in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to public
venues for the sale of liquor in the Yes
of ? No

When the question is in respect to the granting of restaurant liquor licenses for use at performing arts facilities in those municipalities that do not already allow the retail sale of alcohol, it shall be in the following form:

Do you favor the granting of liquor licenses to performing arts facilities for the sale of liquor in the Yes of ? No

When the question is in respect to the granting of liquor licenses for hotels located on property owned by an accredited college or university in those municipalities that do not already allow the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses to hotels on property owned by an accredited college or university in the 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 inby 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 inby Yes of ? No

When the question is in respect to the granting of liquor licenses to continuing care retirement communities in those municipalities that have not already approved the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for continuing care retirement communities inby 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 allowing the sale of liquor by qualified organizations in municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of liquor by qualified organizations in the Yes of ? No

When the question is in respect to the granting of special occasion permits allowing the sale of malt or brewed beverages only by qualified organizations in municipalities that do not already allow the retail sale of malt or brewed beverages, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of malt or brewed beverages only by 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, *resort facilities* and clubs, or liquor licenses shall be granted by the board to public venues, to performing arts facilities, *to continuing care retirement communities*, to hotels located on property owned by an accredited college or university, 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.

* * *

(e) An election may be held on the question of granting liquor licenses to resort facilities in municipalities that do not already allow the retail sale of liquor in subsection (a) at the primary election immediately following the effective date of this subsection and at each subsequent primary election, notwithstanding any referendum frequency restriction in this act to the contrary.

(f) For purposes of this section, "resort facilities" shall mean any hotel, restaurant or club located on property owned by or contiguous to a convention center that offers skiing, golf, hiking and horseback riding. The convention center itself must be located on property at least two thousand acres in size. The property may be located in more than one municipality or county.

Section 14. Section 472.1 of the act is amended to read:

Section 472.1. Clubs.—*(a) Whenever any club in existence at least five years prior to the time of application for license owns a contiguous plot of land in more than two municipalities in one or more but less than all of which the granting of liquor licenses has not been prohibited and at least one acre of the plot of land owned by the club is situated in each municipality in which the granting of liquor licenses has not been prohibited, the club may be issued a club liquor license or a catering license by the board if the board finds that the license will not be detrimental to any residential neighborhood. This section shall not be construed to prohibit the issuance of club liquor licenses or catering licenses which may otherwise be issued under the provisions of this act.*

(b) Any club which holds a liquor license or a catering license under this section on the effective date of this subsection may, for a period of six months from the effective date of this subsection, exchange such license for a restaurant liquor license. The restaurant liquor license shall be nontransferable and shall be issued to the club or concessionaire chosen by the club to operate the restaurant. A restaurant liquor license issued to a concessionaire under this section shall be immediately rescinded upon the termination of the contract between the club and the concessionaire. Notwithstanding any other provisions of the law, if a restaurant liquor license issued under this subsection is rescinded because of the termination of the agreement between the club and the concessionaire, the board may issue a new restaurant license to the club or its newly designated concessionaire at any time.

Section 15. Section 472.4 of the act, added December 7, 1990 (P.L.622, No.160), is amended 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 16. Section 475 of the act 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 the building entrance to which is located within three hundred feet of the entrance or exit of an interstate limited access highway.

(b) This section shall not apply to existing licenses, nor be deemed to affect the right of an existing licensee to reinstatement or renewal of his license.]

Section 17. Section 477 of the act is amended by adding a subsection to read:

Section 477. Applicants to Provide State Tax Identification Numbers and Statement of State Tax Status; Waiver of Confidentiality of Information in the Possession of the Department of Revenue and Other Departments; Review of State Tax Status.—* * *

(g) This section shall also be applicable to any management company utilized by the applicant.

Section 18. Article IV of the act is amended by adding a subdivision to read:

(C.1) Shipment of Wine.

Section 488. Shipment of Wine into Commonwealth.—(a) The shipment of wine from out-of-State to residents of this Commonwealth is prohibited, except as otherwise provided for in this section.

(b) Notwithstanding any other provision of this act or law to the contrary, a person licensed by another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine and who obtains a direct wine shipper license as provided for in this section may ship up to nine liters per month of any wine not included on the list provided for in subsection (c) on the Internet order of any resident of this Commonwealth who is at least twenty-one (21) years of age for such resident's personal use and not for resale.

(c) Each month, the board shall publish on the Internet a list of all classes, varieties and brands of wine available for sale in the Pennsylvania Liquor Stores. A person holding a direct shipper license may ship only those classes, varieties and brands of wine not included on the list at the time an Internet order is placed.

(d) An out-of-State wine shipper shall:

(1) Not ship more than nine liters per month on the Internet order of any person in this Commonwealth.

(2) Report to the board each year the total of wine shipped into this Commonwealth in the preceding calendar year.

(3) Permit the board or the Secretary of Revenue, or their designated representatives, to perform an audit of the out-of-State wine shipper's records upon request.

(4) Be deemed to have submitted to the jurisdiction of the board, any other State agency and the courts of this Commonwealth for purposes of enforcement of this section and any related laws, rules or regulations.

(e) A direct shipper may ship wine on the Internet order of a resident into this Commonwealth provided that the wine is shipped to a Pennsylvania Liquor Store selected by the resident. The wine will be subject to taxes in the same manner as wine sold directly by the board. The wine will not be released by the State store until all moneys due, including all taxes and fees, have been paid by the resident.

(f) A person shall sign an affidavit provided by the Pennsylvania Liquor Store where the wine was delivered to stating that the wine will only be used for the person's personal use. Any person who resells wine obtained under this section commits a misdemeanor of the second degree.

(g) The board may promulgate such rules and regulations as are necessary to implement and enforce the provisions of this section. The board may charge the resident a fee to cover the cost associated with processing the Internet order.

(h) The board shall submit monthly reports to the Appropriations Committee and the Law and Justice Committee of the Senate and to the Appropriations Committee and the Liquor Control Committee of the House of Representatives summarizing the number of direct shipper licenses issued by the board, the quantity of wine sold pursuant to this section and the total dollar value of sales under this section.

(i) The term "wine" as used in this section shall mean liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less. The term "wine" shall not include malt or brewed beverages nor shall wine include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.

Section 19. Section 491(2), (8) and (11) of the act are amended to read:

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

It shall be unlawful—

* * *

(2) Possession or Transportation of Liquor or Alcohol. For any person, except a manufacturer or the board or the holder of a sacramental wine license or of an importer's license, to possess or transport any liquor or alcohol within this Commonwealth which was not lawfully acquired prior to January first, one thousand nine hundred and thirty-four, or has not been purchased from a Pennsylvania Liquor Store or a licensed limited winery in Pennsylvania, except [miniatures totalling less than one gallon purchased by a collector of the same in another state or foreign country, or] in accordance with *section 488* or the board's regulations. *In addition, it shall be lawful for anyone to possess miniatures totaling less than one gallon purchased in another state or a foreign country.* The burden shall be upon the person possessing or transporting such liquor or alcohol to prove that it was so acquired. But nothing herein contained shall prohibit the manufacture or possession of wine by any person in his home for consumption of himself, his family and guests and not for sale, not exceeding, during any one calendar year, two hundred gallons, any other law to the contrary notwithstanding. Such wine shall not be manufactured, possessed, offered for sale or sold on any licensed premises.

None of the provisions herein contained shall prohibit nor shall it be unlawful for any person to import into Pennsylvania, transport or have in his possession, an amount of liquor not exceeding one gallon in volume upon which a State tax has not been paid, if it can be shown to the satisfaction of the board that such person purchased the liquor in a foreign country or United States territory and was allowed to bring it into the United States. Neither shall the provisions contained herein prohibit nor make it unlawful for (i) any member of the armed forces on active duty, or (ii) any retired member of the armed forces, or (iii) any totally disabled veteran, or (iv) the spouse of any person included in the foregoing classes of persons to import into Pennsylvania, transport or have in his possession an

amount of liquor not exceeding one gallon per month in volume upon which the State tax has not been paid, so long as such liquor has been lawfully purchased from a package store established and maintained under the authority of the United States and is in containers identified in accordance with regulations issued by the Department of Defense. Such liquor shall not be possessed, offered for sale or sold on any licensed premises.

None of the provisions herein contained shall prohibit nor shall it be unlawful for any consul general, consul or other diplomatic officer of a foreign government to import into Pennsylvania, transport or have in his possession liquor upon which a State tax has not been paid, if it can be shown to the satisfaction of the board that such person acquired the liquor in a foreign country and was allowed to bring it into the United States. Such liquor shall not be possessed, offered for sale or sold on any licensed premises.

Any person violating the provisions of this clause for a first offense involving the possession or transportation in Pennsylvania of any liquor in a package (bottle or other receptacle) or wine not purchased from a Pennsylvania Liquor Store or from a licensed limited winery in Pennsylvania, with respect to which satisfactory proof is produced that the required Federal tax has been paid and which was purchased, procured or acquired legally outside of Pennsylvania shall upon conviction thereof in a summary proceeding be sentenced to pay a fine of twenty-five dollars (\$25) for each such package, plus costs of prosecution, or undergo imprisonment for a term not exceeding ninety (90) days. Each full quart or major fraction thereof shall be considered a separate package (bottle or other receptacle) for the purposes of this clause. Such packages of liquor shall be forfeited to the Commonwealth in the manner prescribed in Article VI of this act but the vehicle, boat, vessel, animal or aircraft used in the illegal transportation of such packages shall not be subject to forfeiture: Provided, however, That if it is a second or subsequent offense or if it is established that the illegal possession or transportation was in connection with a commercial transaction, then the other provisions of this act providing for prosecution as a misdemeanor and for the forfeiture of the vehicle, boat, vessel, animal or aircraft shall apply.

* * *

(8) Importation and Sales of Alcohol. For any person, to import alcohol into this Commonwealth, or to sell alcohol to any person, except in accordance with *section 488 and* the regulations of the board.

* * *

(11) Importation of Liquor. For any person, other than the board or the holder of a sacramental wine license [or of], an importer's license *or a direct shipper's license*, to import any liquor whatsoever into this Commonwealth, but this section shall not be construed to prohibit railroad and pullman companies from selling liquors purchased outside the Commonwealth in their dining, club and buffet cars which are covered by

public service liquor licenses and which are operated in this Commonwealth.

* * *

Section 20. Section 493(3), (9), (14) and (26) of the act, amended December 20, 2000 (P.L.992, No.141), 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—

* * *

[(3) Exchange of Liquor or Malt or Brewed Beverages For Merchandise, etc. For any licensee or the board, or any employe, servant or agent of a licensee or of the board, to sell, offer to sell or furnish any liquor or malt or brewed beverages to any person on a pass book or store order, or to receive from any person any goods, wares, merchandise or other articles in exchange for liquor or malt or brewed beverages.]

* * *

[(9) Retail Licensees Furnishing Free Lunch, etc. For any retail liquor licensee or any retail dispenser, his agents, servants or employes, to furnish, give or sell below a fair cost any lunch to any consumer, except such articles of food as the board may authorize and approve.]

* * *

(14) Permitting Undesirable Persons or Minors to Frequent Premises. For any hotel, restaurant or club liquor licensee, or any retail dispenser, his servants, agents or employes, to permit persons of ill repute, [known criminals,] prostitutes or minors to frequent his licensed premises or any premises operated in connection therewith, except minors accompanied by parents, guardians, or under proper supervision or except minors who frequent any restaurant or retail dispensing licensee whose sales of food and non-alcoholic beverages are equal to [seventy] *fifty* per centum or more of the combined gross sales of both food and alcoholic beverages on the condition that alcoholic beverages may not be served at the table or booth at which the said minor is seated at the time (unless said minor is under proper supervision as hereinafter defined) and on the further condition that only table service of alcoholic beverages or take-out service of beer shall be permitted in the room wherein the minor is located: Provided, however, That it shall not be unlawful for any hotel, restaurant or club liquor licensee or any retail dispenser to permit minors under proper supervision upon the licensed premises or any premises operated in connection therewith for the purpose of a social gathering, even if such gathering is exclusively for minors: And provided further, That no liquor shall be sold, furnished or given to such minors nor shall the licensee knowingly permit any liquor or malt or brewed beverages to be sold, furnished or given to or be consumed

by any minor, and the area of such gathering shall be segregated from the remainder of the licensed premises. In the event the area of such gathering cannot be segregated from the remainder of the licensed premises, all alcoholic beverages must be either removed from the licensed premises or placed under lock and key during the time the gathering is taking place. **[Notice of such gathering shall be given the board as it may, by regulation, require.]** *Written notice, at least forty-eight (48) hours in advance of such gathering, shall be given to the enforcement bureau.* Any licensee violating the provisions of this clause shall be subject to the provisions of section 471. Nothing in this clause shall be construed to make it unlawful for minors to frequent public venues or performing arts facilities.

“Proper supervision,” as used in this clause, means the presence, on that portion of the licensed premises where a minor or minors are present, of one person twenty-five years of age or older for every fifty minors or part thereof who is directly responsible for the care and conduct of such minor or minors while on the licensed premises and in such proximity that the minor or minors are constantly within his sight or hearing. The presence of the licensee or any employe or security officer of the licensee shall not constitute proper supervision.

* * *

(26) **Worthless Checks.** For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to make, draw, utter, issue or deliver, or cause to be made, drawn, uttered, issued or delivered, any check, draft or similar order, for the payment of money in payment for any purchase of malt or brewed beverages, when such retail liquor licensee, retail dispenser, distributor or importing distributor, has not sufficient funds in, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check. Any person who is a licensee under the provisions of this article, who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, shall, within five days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order. *If the violation of this clause is the first such violation by the licensee that calendar year involving a check, draft or similar order from the purchaser to the seller and if the check, draft or similar order is subsequently honored within ten days from the day it was made, drawn, uttered, issued or delivered, then the enforcement bureau shall issue an administrative warning in lieu of citation.*

Section 21. Section 495(a), (e) and (f) of the act, amended or added December 21, 1988 (P.L.1879, No.183) and December 20, 1996 (P.L.1523, No.199), are amended to read:

Section 495. Identification Cards; Licensees and State Liquor Store Employes Saved From Prosecution.—(a) The *valid* photo driver's license or identification card issued by the Department of Transportation or by any other state, [an] *a valid* armed forces of the United States identification card, a valid passport or a travel visa issued by *the United States* or a foreign country that contains the holder's photograph shall, for the purpose of this act, be accepted as an identification card.

* * *

(e) Any such signed form in the possession of a licensee or an employe of a State Liquor Store may be offered as a defense in all civil and criminal prosecutions for serving a minor, and no penalty shall be imposed if the administrative law judge or the courts are satisfied that the licensee or State Liquor Store employe acted in good faith.

(f) A photograph or photocopy or other visual or video presentation of the identification card set forth in subsection (a) in the possession of a licensee or an employe of a State Liquor Store may be offered as a defense in all civil and criminal prosecutions for serving a minor, and no penalty shall be imposed if the administrative law judge or the courts are satisfied that the licensee or State Liquor Store employe acted in good faith.]

(e) No penalty shall be imposed on a licensee, licensee's employe or State Liquor Store employe for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), the minor completed and signed the form as set forth in subsection (c) and these documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(f) In addition to the defense set forth in subsection (e), no penalty shall be imposed on a licensee, licensee's employe or State Liquor Store employe for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), a photograph, photocopy or other visual or video presentation of the identification card was made and those documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

Section 22. Section 496 of the act is amended to read:

Section 496. Reporting of Worthless Checks.—Any person who is a licensee under the provisions of this article[,] who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order, for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, *and which violates the provisions of section 493(26)*, shall, within twenty days of receipt of notice of such dishonor, notify the board thereof. Such notification to the board shall be in such manner and form as the board shall direct.

Section 23. Section 498 of the act, amended December 20, 1996 (P.L.1523, No.199), is amended to read:

Section 498. Unlawful Advertising.—(a) Manufacturers, wholesalers, retailers and shippers, whether from outside or inside this Commonwealth, and any licensee under this act are permitted to advertise their products and prices in this Commonwealth. All advertisements shall be subject to all Federal and State laws and regulations.

(b) No advertisement of price may contain the following:

- (1) Any statement that is false, deceptive or misleading.
- (2) Any statement that is disparaging of the products of a competitor.
- (3) Any statement referring to monetary comparison between brands.

(c) Prices that are advertised or displayed on the licensed premises shall be those that are in effect at the time of the advertisement or display.

[(d) No prices, other than the posting of a printed menu or wine list as expressly provided for in section 493(20)(i), may be displayed in a window of any licensed establishment.]

(e) The following shall apply to all alcoholic beverage and malt beverage advertising:

(1) The entity responsible for the advertisement shall be clearly identified in the advertisement.

(2) No licensee may distribute, by mail, personally or through servants, agents or employees, price lists, circulars or handbills off the licensed premises to the general public as a means of advertising liquor, wine or malt or brewed beverages.

(3) No print advertisement of alcoholic beverages of any type shall be permitted within three hundred feet of any church, school or public playground. *This prohibition shall not preclude any point of sale advertisement, menus or other print advertisement regarding alcoholic beverages inside the licensed premises.*

(4) The use in any advertisement of alcoholic beverages of any subject matter, language or slogan directed to minors to promote consumption of alcoholic beverages is prohibited. Nothing in this section shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.

(5) No advertisement shall be permitted, either directly or indirectly, in any booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or in behalf of any educational institution.

(6) No advertisement that is obscene shall be permitted.

(f) Advertisement of alcoholic beverages and malt and brewed beverages shall not be inconsistent with the spirit of safety or safe driving programs.

(g) For purposes of this subsection, the term "advertisement" shall mean any advertising of alcoholic beverages through the medium of radio broadcast, television broadcast, newspapers, periodicals or other publication, outdoor advertisement or any other printed or graphic matter,

including booklets, flyers or cards, or on the product label or attachment itself.

Section 24. Section 499 of the act is amended by adding subsections to read:

Section 499. Premises to be Vacated by Patrons.—* * *

(d) This section shall not apply to holders of public service licenses.

(e) Nothing in this section shall prohibit restaurant liquor, eating place retail dispenser or hotel licenses from being open seven o'clock ante meridian on Sunday until two o'clock ante meridian Monday for the purpose of serving food and nonalcoholic beverages.

Section 25. The amendment of section 201 relating to a member's term of office shall apply to all members of the board appointed on or after the effective date of this act.

Section 26. This act shall take effect as follows:

- (1) The amendment or addition of sections 102, 201, 412, 413, 431.1, 461, 463, 472, 472.1 and 472.4 of the act shall take effect immediately.
- (2) Section 25 and this section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 21st day of February, A.D. 2002.

MARK S. SCHWEIKER