

No. 2006-84

## AN ACT

HB 2376

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 definitions, for sale of malt or brewed beverages by liquor licensees, for restrictions on purchases and sales of malt and brewed beverages by retail dispensers, for permit renewals and for possession or transportation of liquor or alcohol; and prohibiting the use of alcohol vaporizing devices.

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

Section 1. The definitions of "automobile racetrack," "case" and "public venue" 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 or added May 31, 1996 (P.L.312, No.49), February 21, 2002 (P.L.103, No.10) and December 8, 2004 (P.L.1810, No.239), are amended and the section is amended by adding a definition to read:

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

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***"Alcohol vaporizing device" shall mean any device, machine or process which mixes spirits, liquors or other alcoholic products with oxygen or any other gas to produce a vaporized product for consumption by inhalation.***

\* \* \*

"Automobile racetrack" shall mean a track used principally for holding automobile races which has a seating capacity in excess of [~~twenty-five~~] **ten** thousand.

\* \* \*

"Case" shall mean a package prepared by the manufacturer for sale or distribution of twelve or more original containers totaling [~~two hundred eighty-eight~~] **two hundred sixty-four** or more fluid ounces of malt or brewed beverages excepting those packages containing twenty-four or more original containers each holding seven fluid ounces or more.

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“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 **[three thousand (3,000)] two thousand (2,000)** people. The term shall also mean any regional history center, multipurpose cultural and science facility, museum or convention or trade show center, regardless of owner and seating capacity, that has a floor area of at least sixty thousand (60,000) square feet in one building. The term shall also mean a convention or conference center owned by a city of the third class, regardless of seating capacity, that has a floor area of at least fifteen thousand (15,000) square feet in one building.

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Section 2. Section 407 of the act, amended July 6, 2005 (P.L.135, No.39), is amended to read:

Section 407. Sale of Malt or Brewed Beverages by Liquor Licensees.—(a) Every liquor license issued to a hotel, restaurant, club, or a railroad, pullman or steamship company under this subdivision (A) for the sale of liquor shall authorize the licensee to sell malt or brewed beverages at the same places but subject to the same restrictions and penalties as apply to sales of liquor, except that licensees other than clubs may sell malt or brewed

beverages for consumption off the premises where sold in quantities of not more than one hundred ninety-two fluid ounces in a single sale to one person. No licensee under this subdivision (A) shall at the same time be the holder of any other class of license, except a retail dispenser's license authorizing the sale of malt or brewed beverages only.

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

(2) The application for a permit to sell malt or brewed beverages for consumption off the premises shall be on forms designated by the board and contain such information as the board may require. The application and renewal fee shall be as prescribed in section 614-A(27) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

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

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

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

Section 3. Section 442(a) of the act, amended July 6, 2005 (P.L.135, No.39), is amended to read:

Section 442. Retail Dispensers' Restrictions on Purchases and Sales.—(a) (1) No retail dispenser shall purchase or receive any malt or brewed beverages except in original containers as prepared for the market by the manufacturer at the place of manufacture. The retail dispenser may thereafter break the bulk upon the licensed premises and sell or dispense the same for consumption on or off the premises so licensed: Provided, however, That no retail dispenser may sell malt or brewed beverages for consumption off the premises in quantities in excess of one hundred ninety-two fluid ounces: Provided, further, That no club licensee may sell any malt or brewed beverages for consumption off the premises where sold or to persons not members of the club.

(2) Notwithstanding paragraph (1), after October 31, 2005, a retail dispenser licensee located in a city of the first class who is otherwise

permitted to sell malt or brewed beverages for consumption off the premises may not do so unless, *every two years*, it acquires a permit from the board.

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

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

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

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

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Section 4. Section 478 of the act, amended July 6, 2005 (P.L.135, No.39), is amended to read:

Section 478. Renewal of Amusement Permit; Renewal of Permit for Sales for Off-Premises Consumption in Cities of the First Class.—(a) Upon the annual review of the operating history of a licensee prior to the validation period or the periodic renewal of the license, the Director of the Bureau of Licensing shall have the authority to state objection to the renewal of the amusement permit as required by section 493(10). Such objection shall be based upon the operating history, and notice shall be provided to the licensee in writing, by certified mail, at the address listed on the license. Upon the completion of any hearing conducted concerning the renewal of the amusement permit pursuant to section 464, the board may, in its discretion, refuse to renew the amusement permit.

(b) In cases where the board refuses to renew the amusement permit of any licensee, the licensee or the applicant or manager or person with a majority or controlling interest of either in the operation of this or any other license may not again be eligible to receive a new permit from the board until the expiration of a period of up to two years from the final adjudication.

(c) Upon the **[annual] biennial** review of the operating history of a licensee prior to the validation period or the periodic renewal of the license, the Director of the Bureau of Licensing shall have the authority to state

objection to the renewal of the permit for sale of malt or brewed beverages required under section 407 or 442. Any objection shall be based upon the operating history, and notice shall be provided to the licensee in writing, by certified mail, at the address listed on the license. Upon the completion of any hearing conducted concerning the renewal of the permit pursuant to section 464, the board may, in its discretion, refuse to renew the permit.

(d) In cases where the board refuses to renew the permit for sale of malt or brewed beverages required under section 407 or 442 of any licensee, the licensee or the applicant or manager or person with a majority or controlling interest, of either in the operation of this or any other license, may not again be eligible to receive a new permit from the board until the expiration of a period of up to two years from the final adjudication.

Section 5. Section 491(2) of the act, amended February 21, 2002 (P.L.103, No.10), is 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 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.]** *Notwithstanding this section or any other provision of the law, wine may be produced by any person without a license if the wine is not produced for sale and total production does not exceed two hundred gallons per calendar year. Wine produced in accordance with this clause may be used at organized affairs, exhibitions, competitions, contests, tastings or judgments if it is not sold or offered for sale.*

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.

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Section 6. Section 493 of the act is amended by adding a clause to read:

Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.—The term “licensee,” when used in this section,

shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful—

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***(32) Sale or Purchase of Alcohol Vaporizing Devices. For any licensee, his servants or agents or employes to possess or permit an alcohol vaporizing device on the licensed premises.***

Section 7. This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 7th day of July, A.D. 2006.

EDWARD G. RENDELL