

No. 2019-86

AN ACT

HB 947

Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," in preliminary provisions, further providing for definitions; in licenses and regulations, liquor, alcohol and malt and brewed beverages, further providing for sales by liquor licensees and restrictions, for performing arts facility license, for limiting number of retail licenses to be issued in each county, for licenses not assignable and transfers and for hours of operation relative to manufacturers, importing distributors and distributors; and, in distilleries, wineries, bonded warehouses, bailees for hire and transporters for hire, further providing for distilleries.

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

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

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

* * *

"Commercial and mixed-use overlay project" shall mean a planned development:

- (1) situated on at least twenty-five acres;***
- (2) constructed since January 1, 2019;***
- (3) with at least two hundred seventy-five thousand square feet of actual or proposed development;***
- (4) with a mix of commercial and residential uses; and***
- (5) that is adjacent to an existing hotel property with at least ninety rooms.***

* * *

Section 2. Sections 406(d) and 413(f)(1) of the act are amended to read:

Section 406. Sales by Liquor Licensees; Restrictions.—* * *

(d) Subject to section 412, licensed public venues may sell liquor and malt or brewed beverages on Sundays from eleven o'clock antemeridian until midnight without the need to acquire or qualify for a special permit. In addition, subject to section 413, licensed performing arts facilities may sell liquor and malt or brewed beverages on Sundays from [one o'clock

postmeridian] ten o'clock antemeridian until ten o'clock postmeridian without the need to acquire or qualify for a special permit.

* * *

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

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

(1) Sales of liquor and malt or brewed beverages may be made two hours before, during and one hour after any 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 **[one o'clock postmeridian] ten o'clock antemeridian** or after ten o'clock postmeridian on Sundays. However, facilities that had been licensed under former section 408.3(a) and 408.3(a.2) may sell liquor and malt or brewed beverages anytime except from two o'clock antemeridian to seven o'clock antemeridian or prior to one o'clock postmeridian or after ten o'clock postmeridian on Sundays, regardless of whether there is a performance at the facility.

* * *

Section 3. Section 461(a) of the act, amended July 2, 2019 (P.L.371, No.57), is amended and the section is amended by adding a subsection 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, privately-owned ski resorts 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, licenses subject to the mixed-use town development project provisions of this act, *licenses subject to the commercial and mixed-use overlay project provisions of this act*, licenses subject to the tourist development project provisions of this act 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.6) Notwithstanding any other provision of this act, the board may approve the transfer of a restaurant liquor license, available for auction under section 470.3, to any county for the purposes of a commercial and mixed-use overlay project, subject to the following conditions:

(1) The proposed project must be a commercial and mixed-use overlay project and must be located within a municipality that allows for the issuance and transfer of restaurant liquor licenses under section 472.

(2) The initial application may be submitted to the board by an interested party. The application shall be accompanied by a resolution or ordinance indicating that the municipality where the proposed project is located has approved the request to have the area designated as a commercial and mixed-use overlay project by the board, a map of the area proposed to be so designated and any additional information the board may require.

(3) The application shall indicate the number of licenses that the applicant is seeking to transfer, up to twenty licenses. In addition to the normal application and license fees for a restaurant liquor license, the application shall be accompanied by a twenty-five thousand dollar (\$25,000) surcharge for each license.

(4) Upon receipt of a completed application that satisfies board requirements, the board shall approve the request and deposit the twenty-five thousand dollar (\$25,000) surcharge per license into the State Stores Fund. Each license shall be held in safekeeping for the benefit of the applicant until the applicant files a formal transfer application. The applicant may assign the applicant's rights to file a formal transfer application to a third party.

(5) The board may choose the specific licenses that will be made available for transfer but preference shall be given to licenses from a saturated county, if they are available, up to the maximum number of licenses that may be accepted from that county.

(6) For purposes of this subsection, the maximum number of licenses that may be accepted from a county shall be calculated by subtracting from the total number of restaurant liquor licenses in the county, a number equal to 2.64 times the county population divided by three thousand (3,000).

(7) A license placed in safekeeping under paragraph (4) may be held for up to four years from the date the board approves the application and shall be exempt from the additional safekeeping fees imposed under section 474.1. The license shall be subject to all other fees, including renewal fees and the application surcharge imposed under section 470. Upon expiration of the four-year period, the license shall be revoked unless the applicant has submitted a transfer application prior to expiration. If a license is revoked, the applicant is not entitled to a refund.

(8) A license transferred under this subsection is subject to all of the following:

(i) The license may not be transferred to a location outside of the commercial and mixed-use overlay project.

(ii) The license is ineligible for a wine expanded permit under section 415.

(iii) The licensee may not sell malt and brewed beverages for off-premises consumption.

(9) A license transferred into a new county under this subsection is subject to all of the following:

(i) The license shall not be counted toward, nor be subject to, the county quota set forth in this section.¹

(ii) The license shall have its renewal and validation dates amended to match the renewal and validation date of the licenses in the county.

* * *

Section 4. Section 468(a)(1) of the act, amended July 2, 2019 (P.L.371, No.57), is amended to read:

Section 468. Licenses Not Assignable; Transfers.—(a) (1) Licenses issued under this article may not be assigned. The board, upon payment of the transfer filing fee, is hereby authorized to transfer any license issued by it under the provisions of this article from one person to another or from one place to another, or both. Except for restaurant liquor and eating place retail dispenser licenses transferred under section 461(b.4) and restaurant liquor licenses transferred under section 461(b.5) **and (b.6)**, if the license is a retail license, the new location must be within the same county as the existing location or, if the municipality is located in more than one county, within the same municipality as the existing location.

* * *

Section 4.1. Section 492.1(a) of the act is amended to read:

Section 492.1. Hours of Operation Relative to Manufacturers, Importing Distributors and Distributors.—(a) **(1) Manufacturers may sell or deliver malt or brewed beverages between two o'clock antemeridian of any Monday and twelve o'clock midnight of the following Saturday.**

(2) Notwithstanding any other provision of law, manufacturers may sell malt and brewed beverages and alcohol subject to section 446(a)(2) for on-premises consumption between the hours of nine o'clock antemeridian and twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian and eleven o'clock postmeridian.

* * *

Section 4.2. Section 505.4(b)(1) and (5) and (c) of the act, amended July 2, 2019 (P.L.324, No.45), is amended to read:

Section 505.4. Limited Distilleries and Distilleries.—* * *²

(b) (1) The board may issue a limited distillery license that will allow the holder thereof to operate a distillery that shall not exceed production of one hundred thousand (100,000) gallons of distilled liquor per year. The holder

¹"the county quota set forth in section 461." in enrolled bill.

²Section 505.4. Distilleries.—* * * in enrolled bill.

of the license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and **[eleven o'clock postmeridian] twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian through eleven o'clock postmeridian** so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores may not be offered for sale at a licensed limited distillery location at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a limited distillery license may not sell a product or a substantially similar product which is listed for sale as a stock item by the board in State Liquor Stores to a licensee at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a limited distillery license may also sell wine, alcoholic cider and fermented fruit beverages produced by a licensed limited winery,¹ liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery for on-premises consumption. The combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited distillery's own sales of liquor for the preceding calendar year: however, if a limited distillery did not operate for an entire calendar year during the preceding year, then its combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited distillery's own liquor for that year.

* * *

(5) The holder of a limited distillery license may provide tasting samples of liquor that in total do not exceed one and one-half (1.5) fluid ounces per person on the licensed premises and at the two (2) board-approved locations. Samples may be sold or provided free of charge and may only be provided between the hours of nine o'clock antemeridian and **[eleven o'clock postmeridian] twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian through eleven o'clock postmeridian**.

* * *

(c) (1) The holder of a distillery license as issued under section 505 may sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and **[eleven o'clock postmeridian] twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian through eleven o'clock postmeridian** so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores may not be offered for sale at a licensed distillery location at a price which is lower than that charged by the board

¹The holder of a limited distillery license may also sell wine and alcoholic cider produced by a licensed limited winery," in enrolled bill.

and under such conditions and regulations as the board may enforce. The holder of a distillery license may not sell a product or a substantially similar product which is listed for sale as a stock item by the board in State Liquor Stores to a licensee at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a distillery license may also sell its liquor, wine, alcoholic cider and fermented fruit beverages produced by a licensed limited winery,¹ liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery for on-premises consumption. The combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the distillery's own sales of liquor for the preceding calendar year: however, if a distillery did not operate for an entire calendar year during the preceding year, then its combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the distillery's own liquor for that year.

(2) The holder of a distillery license as issued under section 505 may provide tasting samples of liquor that in total do not exceed one and one-half (1.5) fluid ounces. Samples may be sold or provided free of charge between the hours of nine o'clock antemeridian and **[eleven o'clock postmeridian] twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian through eleven o'clock postmeridian.**

Section 5. This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
 - (i) This section.
 - (ii) The amendment or addition of sections 406(d), 413(f)(1), 492.1(a)(2) and 505.4(b)(1), (5) and (c) of the act.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 21st day of November, A.D. 2019

TOM WOLF

¹"The holder of a distillery license may also sell its liquor, wine and alcoholic cider produced by a licensed limited winery," in enrolled bill.