

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1547** Session of  
2017

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INTRODUCED BY J. HARRIS, JUNE 12, 2017

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AS REPORTED FROM COMMITTEE ON LIQUOR CONTROL, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 13, 2017

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## AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An  
2 act relating to alcoholic liquors, alcohol and malt and  
3 brewed beverages; amending, revising, consolidating and  
4 changing the laws relating thereto; regulating and  
5 restricting the manufacture, purchase, sale, possession,  
6 consumption, importation, transportation, furnishing, holding  
7 in bond, holding in storage, traffic in and use of alcoholic  
8 liquors, alcohol and malt and brewed beverages and the  
9 persons engaged or employed therein; defining the powers and  
10 duties of the Pennsylvania Liquor Control Board; providing  
11 for the establishment and operation of State liquor stores,  
12 for the payment of certain license fees to the respective  
13 municipalities and townships, for the abatement of certain  
14 nuisances and, in certain cases, for search and seizure  
15 without warrant; prescribing penalties and forfeitures;  
16 providing for local option, and repealing existing laws," in  
17 preliminary provisions, further providing for definitions; in  
18 Pennsylvania Liquor Control Board, further providing for  
19 enforcement; in licenses and regulations and liquor, alcohol  
20 and malt and brewed beverages, further providing for hearings  
21 upon refusal of licenses, renewals or transfers and appeals,  
22 providing for declaration of need and further providing for  
23 revocation and suspension of licenses and fines and for  
24 rights of municipalities preserved; in distilleries,  
25 wineries, bonded warehouses, bailees for hire and  
26 transporters for hire, further providing for appeals; and, in  
27 property illegally possessed or used and forfeitures and  
28 nuisances, providing for saturated nuisance market.

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

31 Section 1. The definitions of "eating place" and

1 "restaurant" in section 102 of the act of April 12, 1951  
2 (P.L.90, No.21), known as the Liquor Code, are amended to read:

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

6 \* \* \*

7 "Eating place" shall mean a premise where food is regularly  
8 and customarily prepared and sold, having a total area of not  
9 less than three hundred square feet available to the public in  
10 one or more rooms, other than living quarters, and equipped with  
11 tables and chairs, which must be in place and available for  
12 immediate seating of patrons at all times, including bar seats,  
13 but not including stacked or stored chairs on the licensed  
14 premises, accommodating thirty persons at one time. The board  
15 shall, by regulation, set forth what constitutes tables and  
16 chairs sufficient to accommodate thirty persons at one time.

17 \* \* \*

18 "Restaurant" shall mean a reputable place operated by  
19 responsible persons of good reputation and habitually and  
20 principally used for the purpose of providing food for the  
21 public, the place to have an area within a building of not less  
22 than four hundred square feet, equipped with tables and chairs,  
23 which must be in place and available for immediate seating of  
24 patrons at all times, including bar seats, but not including  
25 stacked or stored chairs on the licensed premises, accommodating  
26 at least thirty persons at one time. The board shall, by  
27 regulation, set forth what constitutes tables and chairs  
28 sufficient to accommodate thirty persons at one time.

29 \* \* \*

30 Section 2. Section 211(a) of the act is amended by adding a

1 paragraph to read:

2 Section 211. Enforcement.--(a) There is created within the  
3 Pennsylvania State Police a Bureau of Liquor Control Enforcement  
4 which shall be responsible for enforcing this act and any  
5 regulations promulgated pursuant thereto. Officers and  
6 investigators assigned to the bureau shall have the power and  
7 their duty shall be:

8 \* \* \*

9 (8) To investigate on an annual basis, without notice, any  
10 licensed premises located in a saturated nuisance market as  
11 defined in section 612 and issue citations for any violations of  
12 this act discovered upon the investigation.

13 \* \* \*

14 Section 3. Section 464 of the act is amended to read:

15 Section 464. Hearings Upon Refusal of Licenses, Renewals or  
16 Transfers; Appeals.--The board may of its own motion, and shall  
17 upon the written request of any applicant for club, hotel or  
18 restaurant liquor license, or any applicant for any malt or  
19 brewed beverage license other than a public service license, or  
20 for renewal or transfer thereof, or for the renewal of an  
21 amusement permit, whose application for such license, renewal or  
22 transfer, or the renewal of an amusement permit, has been  
23 refused, fix a time and place for hearing of such application  
24 for license or for renewal or transfer thereof, or the renewal  
25 of an amusement permit, notice of which hearing shall be mailed  
26 to the applicant at the address given in his application. Such  
27 hearing shall be before a hearing examiner designated by the  
28 board. At such hearing, the board shall present its reasons for  
29 its refusal or withholding of license, renewal or transfer  
30 thereof, or its refusal for renewal of an amusement permit. The

1 applicant may appear in person or by counsel, may cross-examine  
2 the witnesses for the board and may present evidence which shall  
3 likewise be subject to cross-examination by the board. Such  
4 hearing shall be stenographically recorded. The hearing examiner  
5 shall thereafter report, with the examiner's recommendation, to  
6 the board in each case. The board shall thereupon grant or  
7 refuse the license, renewal or transfer thereof or the renewal  
8 of an amusement permit. In considering the renewal of a license  
9 or amusement permit, the board shall not refuse any such renewal  
10 on the basis of the propriety of the original issuance or any  
11 prior renewal of such license or amusement permit. If the board  
12 shall refuse such license, renewal or transfer or the renewal of  
13 an amusement permit, following such hearing, notice in writing  
14 of such refusal shall be mailed to the applicant at the address  
15 given in his application. In all such cases, the board shall  
16 file of record at least a brief statement in the form of an  
17 opinion of the reasons for the ruling or order and furnish a  
18 copy thereof to the applicant. Any applicant who has appeared at  
19 any hearing, as above provided, who is aggrieved by the refusal  
20 of the board to issue any such license or to renew or transfer  
21 any such license or to issue or renew any amusement permit may  
22 appeal, or any church, hospital, charitable institution, school  
23 or public playground located within three hundred feet of the  
24 premises applied for, aggrieved by the action of the board in  
25 granting the issuance of any such license or the transfer of any  
26 such license, may take an appeal limited to the question of such  
27 grievance, within [twenty] thirty days from date of refusal or  
28 grant, to the [court of common pleas of the county in which the  
29 premises or permit applied for is located] Commonwealth Court.  
30 If the application is for an economic development license under

1 section 461(b.1) or the intermunicipal transfer of a license,  
2 the governing body of the municipality receiving the new license  
3 or the transferred license may file an appeal of the board  
4 decision granting the license, within [twenty] thirty days of  
5 the date of the board's decision.~~+~~, to the [court of common <--  
6 pleas of the county in which the proposed premises is located] <--  
7 COMMONWEALTH COURT. Such appeal shall be upon petition of the  
8 aggrieved party, who shall serve a copy thereof upon the board,  
9 whereupon a hearing shall be held upon the petition by the court  
10 upon ten days' notice to the board. The said appeal shall act as  
11 a supersedeas unless upon sufficient cause shown the court shall  
12 determine otherwise. The court shall hear the application de  
13 novo on questions of fact, administrative discretion and such  
14 other matters as are involved, at such time as it shall fix, of  
15 which notice shall be given to the board.† The court shall <--  
16 either sustain or over-rule the action of the board and either  
17 order or deny the issuance of a new license or the renewal or  
18 transfer of the license or the renewal of an amusement permit to  
19 the applicant.

20 Section 4. The act is amended by ~~addition~~ ADDING a section <--  
21 to read:

22 Section 470.4. Declaration of Need.--(a) A declaration of  
23 need may be declared by the governing body of a county that  
24 deems itself in need of additional retail liquor licenses above  
25 the quota set forth in section 461 and which has exhausted all  
26 available licenses under section 470.3.

27 (b) The board shall accept applications on forms and in a  
28 manner set forth by the board, and the board shall issue a  
29 declaration of need to a county when the county:

30 (1) has exhausted all available licenses under section

1 470.3; and

2 (2) establishes a lack of reasonable means for obtaining a  
3 suitable license within the county.

4 (c) Licenses revoked or not renewed under section 612 shall  
5 be available for auction under section 470.3 only to counties  
6 that are designated as a county of need under this section, in  
7 the manner set forth by the board and at the date and time  
8 appointed by the board.

9 Section 5. Sections 471(b), 493.1(b) and 515 of the act are  
10 amended to read:

11 Section 471. Revocation and Suspension of Licenses; Fines.--

12 \* \* \*

13 (b) Hearing on such citations shall be held in the same  
14 manner as provided herein for hearings on applications for  
15 license. Upon such hearing, if satisfied that any such violation  
16 has occurred or for other sufficient cause, the administrative  
17 law judge shall immediately suspend or revoke the license, or  
18 impose a fine of not less than fifty dollars (\$50) nor more than  
19 one thousand dollars (\$1,000), or both, notifying the licensee  
20 by registered letter addressed to his licensed premises. If the  
21 licensee has been cited and found to have violated section  
22 493(1) insofar as it relates to sales to minors or sales to a  
23 visibly intoxicated person, section 493(10) insofar as it  
24 relates to lewd, immoral or improper entertainment or section  
25 493(14), (16) or (21), or has been found to be a public nuisance  
26 pursuant to section 611, or if the owner or operator of the  
27 licensed premises or any authorized agent of the owner or  
28 operator has been convicted of any violation of the act of April  
29 14, 1972 (P.L.233, No.64), known as "The Controlled Substance,  
30 Drug, Device and Cosmetic Act," or of 18 Pa.C.S. § 5902

1 (relating to prostitution and related offenses) or 6301  
2 (relating to corruption of minors), at or relating to the  
3 licensed premises, the administrative law judge shall  
4 immediately suspend or revoke the license, or impose a fine of  
5 not less than one thousand dollars (\$1,000) nor more than five  
6 thousand dollars (\$5,000), or both. However, if a licensee has  
7 been cited and found to have violated section 493(1) as it  
8 relates to sales to minors or sales to a visibly intoxicated  
9 person but at the time of the sale the licensee was in  
10 compliance with the requirements set forth in section 471.1 and  
11 the licensee had not sold to minors or visibly intoxicated  
12 persons in the previous four years, then the administrative law  
13 judge shall immediately suspend or revoke the license, or impose  
14 a fine of not less than fifty dollars (\$50) nor more than one  
15 thousand dollars (\$1,000), or both. The administrative law judge  
16 shall notify the licensee by registered mail, addressed to the  
17 licensed premises, of such suspension, revocation or fine. In  
18 the event the fine is not paid within twenty days of the  
19 adjudication, the administrative law judge shall suspend or  
20 revoke the license, notifying the licensee by registered mail  
21 addressed to the licensed premises. Suspensions and revocations  
22 shall not go into effect until thirty days have elapsed from the  
23 date of the adjudication during which time the licensee may take  
24 an appeal as provided for in this act, except that revocations  
25 mandated in section 481(c) shall go into effect immediately. Any  
26 licensee whose license is revoked shall be ineligible to have a  
27 license under this act until the expiration of three years from  
28 the date such license was revoked. In the event a license is  
29 revoked, no license shall be granted for the premises or  
30 transferred to the premises in which the said license was

1 conducted for a period of at least one year after the date of  
2 the revocation of the license conducted in the said premises,  
3 except in cases where the licensee or a member of his immediate  
4 family is not the owner of the premises, in which case the board  
5 may, in its discretion, issue or transfer a license within the  
6 said year. In the event the bureau or the person who was fined  
7 or whose license was suspended or revoked shall feel aggrieved  
8 by the adjudication of the administrative law judge, there shall  
9 be a right to appeal to the board. The appeal shall be based  
10 solely on the record before the administrative law judge. The  
11 board shall only reverse the decision of the administrative law  
12 judge if the administrative law judge committed an error of law,  
13 abused its discretion or if its decision is not based on  
14 substantial evidence. In the event the bureau or the person who  
15 was fined or whose license was suspended or revoked shall feel  
16 aggrieved by the decision of the board, there shall be a right  
17 to appeal to the [court of common pleas] Commonwealth Court in  
18 the same manner as herein provided for appeals from refusals to  
19 grant licenses. Each of the appeals shall act as a supersedeas  
20 unless, upon sufficient cause shown, the reviewing authority  
21 shall determine otherwise; however, if the licensee has been  
22 cited and found to have violated section 493(1) insofar as it  
23 relates to sales to minors or sales to a visibly intoxicated  
24 person, section 493(10) insofar as it relates to lewd, immoral  
25 or improper entertainment or section 493(14), (16) or (21), or  
26 has been found to be a public nuisance pursuant to section 611,  
27 or if the owner or operator of the licensed premises or any  
28 authorized agent of the owner or operator has been convicted of  
29 any violation of "The Controlled Substance, Drug, Device and  
30 Cosmetic Act," or of 18 Pa.C.S. § 5902 or 6301, at or relating



1 to the licensed premises, or if the license has been revoked  
2 under section 481(c), its appeal shall not act as a supersedeas  
3 unless the reviewing authority determines otherwise upon  
4 sufficient cause shown. In any hearing on an application for a  
5 supersedeas under this section, the reviewing authority may  
6 consider, in addition to other relevant evidence, documentary  
7 evidence, including records of the bureau, showing the prior  
8 history of citations, fines, suspensions or revocations against  
9 the licensee; and the reviewing authority may also consider, in  
10 addition to other relevant evidence, evidence of any recurrence  
11 of the unlawful activity occurring between the date of the  
12 citation which is the subject of the appeal and the date of the  
13 hearing. If the reviewing authority is the board, no hearing  
14 shall be held on the application for a supersedeas; however, a  
15 decision shall be made based on the application, answer and  
16 documentary evidence under this subsection. If the application  
17 for a supersedeas is for a license that has been revoked under  
18 section 481(c), the reviewing authority shall grant the  
19 supersedeas only if it finds that the licensee will likely  
20 prevail on the merits. No penalty provided by this section shall  
21 be imposed for any violations provided for in this act unless  
22 the bureau notifies the licensee of its nature within thirty  
23 days of the completion of the investigation.

24 \* \* \*

25 Section 493.1. Rights of Municipalities Preserved.--\* \* \*

26 (b) A municipality may file a petition with the board for an  
27 exemption from section 493(34) of this act for all the licensees  
28 within an identifiable area in the municipality. Prior to  
29 submitting a petition, the municipality shall adopt a local  
30 noise ordinance and a resolution adopted by its governing body

1 confirming support of the petition, citing the noise ordinance  
2 and its intention to enforce the ordinance in place of section  
3 493(34) of this act. Upon receipt of a petition, including a  
4 copy of the noise ordinance, a map of the area to be exempted  
5 and resolution, the board shall hold at least one (1) public  
6 hearing on the petition. The hearing may be held before a  
7 hearing examiner. The hearing shall take place within the  
8 identified area and must comply with the notice, recording and  
9 public participation requirements of 65 Pa.C.S. Ch. 7 (relating  
10 to open meetings). Within sixty (60) days after receipt of the  
11 petition, the board shall disapprove the petition for an  
12 exemption in its entirety or may approve an area more limited  
13 for which the exemption will be granted if the board finds that  
14 granting the petition shall have an adverse effect on the  
15 welfare, health, peace and morals of the residents living in the  
16 vicinity of the identified area; otherwise, the board shall  
17 approve the petition. The board may place additional conditions  
18 on its approval such as limiting the duration of the approval  
19 and any other condition the board deems appropriate. There shall  
20 be a right to appeal to the [court of common pleas] Commonwealth  
21 Court in the same manner as provided by this act for appeals  
22 from refusals to grant licenses.

23 \* \* \*

24 Section 515. Appeals.--The board, the enforcement bureau or  
25 any applicant or any licensee aggrieved by any decision  
26 refusing, suspending or revoking a license under the provisions  
27 of this article may appeal to the [court of the county in which  
28 the licensed premises or the premises to be licensed are  
29 located. In the event an applicant or a licensee shall have no  
30 place of business established within the Commonwealth, his

1 appeal shall be to the] Commonwealth Court. Such appeal shall be  
2 in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to  
3 judicial review of Commonwealth agency action).

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

5 Section 612. Saturated Nuisance Market.--(a) The board may,  
6 upon its own motion or upon notice by the Bureau of Liquor  
7 Control Enforcement or at the written request of a resident of a  
8 zip code area, evaluate a zip code area to determine whether or  
9 not to designate the area as a saturated nuisance market.

10 (b) Immediately upon motion of the board, notice by the  
11 Bureau of Liquor Control Enforcement or receipt of a written  
12 request of a resident of a zip code area, the board shall  
13 evaluate the zip code area to determine whether or not to  
14 designate the area as a saturated nuisance market. The board  
15 shall make the determination by evaluating the following  
16 factors:

17 (1) The number of licenses that have been subject to  
18 objections to renewal, nonrenewal or revocation under this act  
19 within the zip code area in the preceding renewal period.

20 (2) The total number of citations issued against all  
21 licensees within the zip code area in the preceding renewal  
22 period.

23 (3) The total number of police incidents occurring in  
24 licensed establishments, or in the areas surrounding licensed  
25 establishments, within the zip code area in the preceding  
26 renewal period.

27 (4) The total number of conditional licensing agreements  
28 entered into within the zip code area.

29 (c) Within thirty (30) days of the motion, notice or written  
30 request, the board shall make a determination whether or not to

1 designate a zip code area as a saturated nuisance market.  
2 Written notice of the determination shall be provided to all  
3 governing officials and licensees within the zip code area, as  
4 well as any resident that filed a written request with the  
5 board. The written notice shall set forth the reasoning for the  
6 board's determination.

7 (d) A restaurant or eating place retail licensee located  
8 within a saturated nuisance market shall be subject to the  
9 following conditions:

10 (1) A transaction scan device must be used to verify the age  
11 of an individual who appears to be under thirty-five (35) years  
12 of age before making a sale of liquor. Liquor shall not be sold  
13 to anyone under twenty-one (21) years of age or to an individual  
14 that is visibly intoxicated. Information from the use of a  
15 transaction scan device shall not be sold or shared, except that  
16 a licensee may use the data to demonstrate to the enforcement  
17 bureau that the licensee is in compliance.

18 (2) Food preparation is required to take place on the  
19 licensed premises. For purposes of this section, "food  
20 preparation" shall mean the act of preparing multiple  
21 ingredients for human consumption for taste and nutritional  
22 value, and shall not include prepackaged food that does not  
23 require modification for consumption.

24 (3) An application under section 404 for a licensed premise  
25 located within a saturated nuisance market shall be considered a  
26 new license to a new location.

27 (4) The board shall suspend the operating privileges of a  
28 licensee upon notification by the Department of Agriculture or a  
29 local health department that the licensee's retail food facility  
30 license has been suspended, revoked or invalid. Once

1 verification that a licensee's retail food facility license has  
2 been restored, the board shall restore the liquor license  
3 operating privileges of the licensee.

4 (5) Within five (5) days of receiving an application for a  
5 license under section 404, the board shall notify the local law  
6 enforcement agency, State Senator, State Representative and  
7 governing body in the affected jurisdiction that an application  
8 for transfer has been received. The local law enforcement agency  
9 shall have standing in a hearing to present testimony in support  
10 of or against the transfer of the license.

11 (e) ~~A IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY LAW, A~~ <--  
12 ~~licensee that violates this section or any other section of this~~ <--  
13 ~~act or Federal, State or local law shall be subject to citation~~  
14 by the enforcement bureau, which may result in:

15 (1) a fine or suspension or license revocation;

16 (2) nonrenewal of the license;

17 (3) revocation of operating authority; or

18 (4) another penalty authorized under sections 471 and 494.

19 (f) A restaurant or eating place retail licensee located in  
20 a saturated nuisance market that has been cited and found to be  
21 in violation of this act or Federal, State or local law shall be  
22 subject to the following:

23 (1) For a first offense, a fine of not less than two hundred  
24 and fifty dollars (\$250), nor more than one thousand dollars  
25 (\$1,000).

26 (2) For a second offense, a fine of not less than two  
27 thousand dollars (\$2,000), nor more than five thousand dollars  
28 (\$5,000), and suspension of operating privileges for at least  
29 seven (7) days.

30 (3) For a third or subsequent offense, a fine of not less

1 than five thousand dollars (\$5,000), nor more than ten thousand  
2 dollars (\$10,000), and license revocation under section 471.

3 (g) Within sixty days after the completion of two full  
4 renewal periods, the board shall reevaluate a saturated nuisance  
5 market based on the factors set forth under subsection (b) to  
6 determine whether or not to continue the zip code area's  
7 designation as a saturated nuisance market. After conducting the  
8 evaluation, the board shall provide written notice of the  
9 board's determination to all governing officials and licensees  
10 within a zip code area. The written notice shall set forth the  
11 reasoning for the board's determination.

12 (H) (1) THE BOARD SHALL PREPARE AND SUBMIT A REPORT TO THE <--  
13 LAW AND JUSTICE COMMITTEE OF THE SENATE AND THE LIQUOR CONTROL  
14 COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON THE IMPACT OF THE  
15 LEGISLATION CREATING DESIGNATED NUISANCE MARKET AREAS IN THIS  
16 COMMONWEALTH. THE BOARD SHALL COMMENCE PREPARATION OF THE REPORT  
17 BEGINNING ONE YEAR AFTER THE DATE OF DESIGNATION OF A NUISANCE  
18 MARKET AND MUST SUBMIT THE REPORT TO THE COMMITTEES WITHIN  
19 NINETY (90) DAYS. IN COMPILING THE REPORT, THE BOARD SHALL  
20 INCLUDE INFORMATION RELATED TO THE FOLLOWING:

21 (I) THE NUMBER OF LICENSES SUBJECT TO OBJECTION TO RENEWAL,  
22 TO NONRENEWAL OR TO REVOCATION WITHIN THE DESIGNATED AREA.

23 (II) THE TOTAL NUMBER OF CITATIONS ISSUED AGAINST LICENSEES  
24 IN THE DESIGNATED AREA DURING THE PRECEDING RENEWAL PERIOD.

25 (III) THE NUMBER OF POLICE INCIDENTS OCCURRING IN LICENSED  
26 ESTABLISHMENTS, OR IN THE AREAS SURROUNDING LICENSED  
27 ESTABLISHMENTS, WITHIN THE DESIGNATED AREA.

28 (IV) THE FINES, FEES AND SUSPENSIONS IMPOSED ON LICENSEES IN  
29 THE DESIGNATED AREA.

30 (2) THE REPORT SHALL SPECIFICALLY ADDRESS:

1 (I) CHANGES IN THE NUMBER OF CITATIONS.

2 (II) OBJECTIONS TO RENEWALS, NONRENEWALS, POLICE INCIDENTS  
3 AND FINES AS COMPARED WITH SUCH OBJECTIONS PRIOR TO THE LICENSED  
4 ESTABLISHMENT BEING DESIGNATED AS A SATURATED NUISANCE MARKET.

5 (III) ANY LEGISLATIVE OR ADMINISTRATIVE CONCERNS WITH THE  
6 PROVISIONS CONCERNING DESIGNATED SATURATED NUISANCE MARKET AREAS  
7 AND PROVIDE RECOMMENDATIONS REGARDING RESOLUTION OF THE  
8 CONCERNS.

9 ~~(h)~~ (I) As used in this section, the term "zip code area" <--  
10 means the geographic area covered by a postal zip code.

11 Section 7. This act shall take effect in 30 days.