



SPONSOR: Rep. Schwartzkopf & Sen. Walsh
Rep. Baumbach

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 406

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

1 WHEREAS, Title 4 of the Delaware Code empowers the Division of alcohol and Tobacco Enforcement (DATE)
2 to investigate, prevent, and arrest for violations of Title 4; and

3 WHEREAS, the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB), eleven states, and the District of
4 Columbia utilize offers in compromise when the nature of the violation, compliance history of the proponent, or other
5 evidence in the case indicate that acceptance of the offer is the best means available to ensure future compliance; and

6 WHEREAS, this Act will allow DATE to utilize offers in compromise to address industry practices and encourage
7 a fair and open marketplace through corrective actions and administrative sanctions; and

8 WHEREAS, resolving violations of Title 4 or the Rules and Regulations of the Alcoholic Beverage Control
9 Commissioner through an offer in compromise is a judicious utilization of government resources and will facilitate
10 administrative effectiveness.

11 NOW, THEREFORE:

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

13 Section 1. Amend § 403, Title 4 of the Delaware Code by making deletions as shown by strike through and
14 insertions as shown by underline as follows:

15 § 403. Duties and powers of the Division.

16 (a) The Division shall:

17 (1) Investigate, prevent and arrest for violations of this title, make seizure of alcoholic liquor, manufactured,
18 sold, kept or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any
19 provision of this title.

20 (2) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State
21 upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science
22 Laboratories of the Department of Health and Social Services to test alcoholic liquor product when requested by the
23 Division. This subsection does not apply to home breweries.

24 (3) Only require an inventory by a package store licensee if it has evidence to support a finding that such
25 licensee has violated this title.

26 (4) Investigate, prevent, and arrest for violations of this title; seize marijuana, including marijuana products
27 and accessories that are manufactured, sold, kept, or transported in contravention thereof; and confiscate such
28 marijuana, including marijuana products and accessories, whenever required by any provision of this title.

29 (b) The Division may enter into an offer in compromise with an importer to resolve violations of this title or the
30 rules of the Alcoholic Beverage Control Commissioner in lieu of a hearing pursuant §§ 304 or 562 of this title before the
31 Alcoholic Beverage Commissioner.

32 (1) The offer in compromise shall be subject to the following conditions:

33 a. The offer in compromise shall include a monetary penalty of not more than 10% of the estimated
34 average gross monthly sales of alcoholic liquor for the operations of the importer within the 12 months
35 immediately preceding the date of the violation(s), provided that the offer in compromise may be not less than
36 \$250. Any monetary penalties collected under this subsection shall be paid into the General Fund.

37 b. An offer in compromise is not available to any importer who executed a compromise with the Division
38 within the previous 36 months.

39 (2) The offer in compromise may:

40 a. Impose conditions or administrative sanctions by the Division but may not include any suspension or
41 revocation of the license.

42 b. Be used to establish progressive disciplinary penalties or aggravating circumstances during a
43 subsequent Commissioner hearing on a similar or like offense within 5 years from the effective date.

44 c. Be initiated by the Division or the importer provided that the request is not binding on the other party.

SYNOPSIS

This bill grants the Division of Alcohol and Tobacco Enforcement the ability to enter into offers in compromise with importers to resolve alleged violations of Title 4 and Office of the Delaware Alcoholic Beverage Control Commissioner Rules. Currently, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) and eleven states plus the District of Columbia utilize offers in compromise.