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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 1

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

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

1 Section 1. The General Assembly finds and declares all of the following:

2 (1) The Centers for Disease Control (“CDC”) has determined that a novel coronavirus (“COVID-19”) presents
3 a serious public health threat and has advised that asymptomatic individuals may be carriers of the COVID-19 virus
4 who may unknowingly spread the virus to other individuals in close proximity. Social distancing is required to help
5 mitigate the individual exposure to and community spread of the COVID-19 virus.

6 (2) The Governor declared a State of Emergency for the State of Delaware due to a public health threat as a
7 result of COVID-19 on March 12, 2020.

8 (3) The Governor has issued 27 modifications to his original Declaration, including the Second Modification
9 on March 18, 2020, which closed all restaurants, bars, and taverns only allowing them to provide food and beverage
10 service through take-out or drive through service and off-premises delivery. This Modification permitted any
11 restaurant, brewpub, tavern, or taproom with a valid on-premise license to sell alcoholic beverages as part of
12 transactions for take-out or drive through food service so long as the cost for the alcohol did not exceed 40% of the
13 establishment’s total sales transactions.

14 (4) The Governor’s Nineteenth Modification, effective May 22, 2020, modified §§ 524 and 541, Title 4
15 regarding the notice and protest provisions related to the expansion of outdoor seating for food and drink
16 establishments. This Modification permitted all food and drink establishments to expand their outdoor seating for
17 serving food and drinks if certain requirements were met. The permission granted for expansion for outdoor seating
18 under the Modification expires on July 30, 2020, unless expressly extended by the State of Emergency Order or
19 modified by the Delaware Code.

20 (5) On July 16, 2020, the Governor signed H.B. 349 which codified portions of the Second and Nineteenth
21 Modifications to the State of Emergency Declaration by allowing food and drink establishments to sell alcohol for off-

22 premise consumption and allowed establishments to continue to use outdoor seating for serving of food and drinks so
23 long as certain conditions are met. However, H.B. 349 sunsets on March 31, 2021.

24 (5) In response to a surge of COVID-19 cases in this State, the Third Revision to the Twenty-Seventh
25 Modification became effective on November 20, 2020 which increased restrictions on food and drink establishments.
26 These restrictions include: (a) Mandating that the total number of guests inside food and drink establishments could
27 not to exceed 30% of the stated fire occupancy requirements; (b) Prohibiting any areas where people would typically
28 stand, including dance floors and gaming areas; (c) Limiting table seating to a maximum of 6 persons, consisting of no
29 more than 4 adults; and (d) Prohibiting bar service except for parties of 2 people who must be at least 6 feet apart from
30 other parties.

31 (6) Food and drink establishments have suffered significant losses as a result of their closures and restrictions
32 due to COVID-19. Nationally, just in November, 2020, food and drink establishments lost 17,400 jobs, with an
33 unemployment rate of 13.8%.

34 (8) In 2019, restaurant and food industry jobs in Delaware totaled 50,800 which equaled 11% of the total
35 employment in this State. Between February and April 2020, Delaware lost 66% of its food or drink establishment jobs
36 which made Delaware the 3rd highest in the nation.

37 (7) Nationally, the foodservice industry lost \$165 billion in revenue from March to July, 2020, and is on track
38 to lose \$240 billion in sales by the end of the year.

39 (7) In Delaware, food and drink establishments in Delaware lost more than \$160 million in sales in April,
40 2020 alone. Between March and July, 2020, the foodservice industry lost an estimated \$700 million. Revenue from
41 restaurant gross receipts dropped to less than 50% of 2019 receipts. 81% of Delaware restaurant owners estimate they
42 will continue to operate at a loss for the next 6 months. Under the current restrictions, approximately 40% of Delaware
43 restaurants will be forced to shut their doors within a year.

44 (8) Allowing food and drink establishments to continue to sell alcohol beverages for off-premise consumption
45 and extending outdoor seating is necessary and proper in order to ensure the survival of these establishments in this
46 State.

47 Section 2. Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strike through and
48 insertions as shown by underlines as follows:

49 § 512 Licenses.

50 (a) Any person, who is the owner or lessee, or who is recognized by the Commissioner as being in charge of a
51 hotel, beer garden, motel, taproom, restaurant, motorsports speedway, concert hall, horse racetrack, multi-purpose sports

52 facility, club or multiple activity club, may apply to the Commissioner for a license to purchase spirits, beer, or wine from
53 an importer and to receive, keep and sell such spirits, beer, or wine either by the glass or by the bottle for consumption on
54 any portion of the premises approved by the Commissioner for that purpose. Such a license entitles a club to sell such
55 spirits, wine, or beer only to members of that club. A multiple activity club which holds such a license may apply for an
56 additional license to sell such spirits, wine, or beer to any person who is a guest of such club or of a member of such club
57 who is duly registered in accordance with a bylaw or rule of such club, approved by the Commissioner, provided that if the
58 Commissioner determines that any applicant is not a multiple activity club, as defined in § 101 of this title, the application
59 shall be denied. There shall be no age restrictions on persons permitted on the premises of a licensed multiple activity club.

60 (1) Notwithstanding any law, regulation, or rule to the contrary, any restaurant, brewpub, tavern, or taproom,
61 or other entity with a valid on-premise license issued pursuant to chapter 5, subchapter II of this title may sell alcoholic
62 beverages in transactions for take-out, curbside, or drive through service if the alcoholic beverages for off-premise
63 consumption are in containers which are securely closed.

64 Section 3. Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strike through and
65 insertions as shown by underlines as follows:

66 § 524 Notice of application.

67 (a) An application for a new license to purchase for resale, for transfer of an existing license, or for a substantive
68 change to a license or licensed premise shall be filed with the Commissioner's office.

69 (b) Upon filing of an application for a new license to purchase for resale or for a substantive change to a license or
70 licensed premise the applicant shall cause notice to be advertised in at least 2 different newspapers circulated in the
71 community in which the applicant will operate if the application is approved for 3 issues. One of the newspapers must be a
72 "local newspaper," as determined by the Commissioner either through rules or on a case by case basis. If the newspaper is a
73 daily newspaper, the first publication shall be made within 3 days of the filing of the application and the third publishing
74 shall occur within 10 days of filing the application. If the newspaper is a weekly publication, the first publication shall be
75 made within 8 days of filing the application and the third publishing shall occur within 22 days of filing the application.

76 (c) Within 3 days of filing of an application for a new license to purchase for resale or for a substantive change to a
77 license or licensed premise a notice shall be mailed by certified mail or first class mail as evidenced by a certificate of
78 mailing postage-pre-paid to the following entities, individuals or groups of individuals:

79 (1) Except as provided in paragraph (c)(2) of this section, all property owners within 200 feet from any point
80 on the property boundary line of the premises to which the license is to apply;

81 (2) All property owners within 1,000 feet from any point on the property boundary line of the premises to
82 which the license is to apply if the premises is located within 1/4 of a mile of a riverfront, beachfront or other open
83 water, or if the applicant intends to include space for outside dining, outside entertainment or the outside service or
84 consumption of alcoholic beverages;

85 (3) The governing body of any incorporated areas within 1 mile from any point on the property boundary line
86 of the premises to which the license is to apply.

87 (d) The notices referred to in subsections (b) and (c) of this section shall provide such information as determined
88 by the Commissioner either through duly adopted rules or on a case by case basis. The following notice will, in addition to
89 the aforesaid Commissioner approved notice, satisfy this notice provision:

90 “[Name of applicant] has on [Date of application] applied with the Alcoholic Beverage Control (“Commissioner”)
91 for [Nature of application] for a premises located at [Location of the premises, including street and city]. Persons who are
92 against this application should provide written notice of their objections to the Commissioner. For the Commissioner to be
93 required to hold a hearing to consider additional input from persons against the application, the Commissioner must receive
94 one or more documents containing a total of at least 10 signatures of residents or property owners located within 1 mile of
95 the premises or in any incorporated areas located within 1 mile of the premises. The protest(s) must be filed with the
96 Alcoholic Beverage Control Commissioner at the 3rd Floor, Carvel State Office Building, 820 North French Street,
97 Wilmington, DE 19801. The protest(s) must be received by the Commissioner’s office on or before [state a date at least 30
98 days after the application is filed]. Failure to file such a protest may result in the Commissioner considering the application
99 without further notice, input or hearing. If you have questions regarding this matter please contact the Commissioner’s
100 Office.”

101 (e) The term “substantive change” referenced in this section shall mean any of the following:

102 (1) Any permanent change that will increase the square footage of the licensed premises;

103 (2) Any temporary change that will last longer than 60 days and result in an increase of the square footage of
104 the licensed premises;

105 (3) Any change that would require a variance of the Commissioner’s rules or suspension thereof and results
106 in:

107 a. Live entertainment on a licensed patio;

108 b. External speakers or amplifiers on a licensed patio; or

109 c. Wet bar on a licensed patio;

110 (4) Any change in the floor plan of a restaurant licensee which would increase the number of bar seats or
111 increase the area utilized for entertainment; or

112 (5) Any additional circumstance that the Commissioner determines is a substantive change.

113 (f) Notwithstanding § 524(e) of this title or any other law, rule, or regulation to the contrary, substantive change
114 does not mean any of the following:

115 (1) An expansion of outdoor seating for serving of food and drinks that as of March 31, 2021 satisfied all of
116 the requirements of ¶A.2. of the Nineteenth Modification of Governor Carney's State of Emergency Declaration
117 effective May 22, 2020, even if the State of Emergency Due to Public Health Threat is no longer in effect.

118 (2) An expansion of outdoor seating for serving of food and drinks after March 31, 2021 that meets all of the
119 following requirements:

120 a. A plan approved by the appropriate political subdivision that does all of the following:

121 1. Considers local traffic patterns and parking capacity needs, but may extend the boundaries of
122 seating beyond current property boundaries under the discretion of the appropriate political subdivision and
123 applicable property owners on all local right of ways.

124 2. Does not intrude upon the State's right of way, unless approved by the Delaware Department of
125 Transportation in writing.

126 3. Maintains current access, unless approved by Delaware Department of Transportation in writing.

127 4. Maintains proper access to the property for all emergency services.

128 5. Abides by the current Declaration of State of Emergency Due to Public Health Threat and its
129 Modification requirements relating to food and drink establishments unless the State of Emergency is no
130 longer in effect.

131 6. Complies with the Americans Disabilities Act.

132 7. Adheres to all local noise ordinances.

133 8. Allows for the proper control over the distribution of alcoholic beverages.

134 9. Does not result in total outdoor seating capacity that exceeds the indoor seating capacity that the
135 food or drink establishment was authorized to have prior to the Declaration of the State of Emergency Due to
136 Public Health on March 12, 2020.

137 b. Approval by the Office of Alcohol Beverage Control regarding the service of alcohol on premises.

138 (g) Any plan approved by or submitted to the appropriate political subdivision and the Office of Alcohol Beverage
139 Control pursuant to § 524(f) may allow for the service of alcoholic beverages without the requirement to serve food.

140 (h) Any plan submitted to the appropriate political subdivision and the Office of Alcohol Beverage Control
141 pursuant to § 524(f) that meets all of the requirements of § 524(f)(2) should not be denied approval absent exceptional
142 circumstances.

143 § 543 Grounds for refusal of license; transfer or extension of premises.

144 (g) The Commissioner shall not grant a new license of any type and shall not grant an extension of premises of an
145 existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate
146 of Compliance from the appropriate political subdivision showing:

147 (1) That the premises where the license is to be used are properly zoned for the applicant's intended use; and

148 (2) That all necessary permits have been approved; and

149 (3) That the applicant has complied with all other applicable licensing requirements of the appropriate
150 political subdivision.

151 This subsection shall not apply to any application for a temporary extension of premises as authorized by
152 Commissioner rule; provided, that any such application has not been objected to by the appropriate political subdivision
153 which shall be provided with notice of the application by the applicant within 7 days of the date the application is filed with
154 the Commissioner.

155 This subsection shall not apply to any extension of premises of an existing license granted by the Commissioner
156 pursuant to § 524(f) even if the State of Emergency is no longer in effect.

157 Section 4. Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strike through and
158 insertions as shown by underlines as follows:

159 § 561 Grounds for cancellation or suspension.

160 (h)(1) Notwithstanding any law, regulation, or rule to the contrary, the Commissioner may temporarily suspend
161 any license if the Commissioner has reasonable grounds to believe that the public's safety is at risk and that the licensee has
162 violated the provisions of any of the following:

163 a. Declaration of State of Emergency Due to Public Health Threat or any State of Emergency s
164 Modification requirements relating to food and drink establishments unless the State of Emergency is no longer in
165 effect

166 b. Title 4.

167 (2) The temporary suspension shall be until the Commissioner no longer has reasonable grounds to believe
168 that the public's safety is at risk, but can be no longer than 20 days unless otherwise provided herein.

169 (3) At the time of the temporary suspension, the Commissioner shall provide the licensee with notice of a
170 hearing, which shall be held by electronic, telephonic or remote means, within 20 days of the issuance of the temporary
171 suspension.

172 (4) If a licensee fails to attend such hearing, the Commissioner may continue the temporary suspension. If the
173 temporary suspension is continued, a licensee may request the Commissioner to hold another hearing which shall be
174 provided by electronic, telephone, or remote means within 20 days of the licensee's request.

175 (5) After a hearing, the Commissioner may do any of the following:

176 a. Continue the temporary suspension until a public hearing is scheduled in accordance with § 562 of this
177 title if the commissioner believes that the public safety will be at risk if the temporary suspension is lifted.

178 b. Lift the suspension if the Commissioner believes that lifting the temporary suspension will not result in
179 a risk to public safety.

180 c. Impose appropriate conditions or fines on the licensee.

181 d. Take whatever action the Commissioner believes is necessary and appropriate in order to ensure that
182 the public safety will not be at risk by the licensee. except the Commissioner may not cancel or revoke a license
183 unless pursuant to § 562 of this title.

184 § 562 Public hearing and right of appeal.

185 (a) No license shall be cancelled or suspended, or any licensee fined:

186 (1) Until the licensee has been given a public hearing by the Commissioner at which time the licensee shall be
187 entitled to legal representation and to present witnesses; and

188 (2) Unless the ground therefor shall be established by clear and convincing evidence.

189 A full and complete record shall be kept of all proceedings incident to such hearing. All testimony shall be
190 recorded but need not be transcribed unless an order of the Commissioner is appealed to the Superior Court as set forth
191 in subsection (c) of this section.

192 (b) Any order of the Commissioner relative to suspension or cancellation of a license, or a fine imposed against a
193 licensee shall become final 10 days after the licensee receives notice thereof, unless within 10 days of the date of the
194 postmark on the Commissioner's decision a written appeal is filed in the Superior Court. No bond shall be required for
195 filing such appeal.

196 (c) The appeal shall state the grounds upon which a review is sought. After the appeal is filed, service shall be
197 made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and
198 papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as

199 practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review
200 of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized
201 competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the
202 absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is
203 free from legal error.

204 (d) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court of this
205 State in the same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the
206 Commissioner shall enter an order in accordance with such determination, or shall take such further or other action as the
207 Court may order. A petition for judicial review shall act as a supersedeas.

208 (e) The public hearing required in subsection (a) of this section may be by electronic, telephone, or remote means.

209 Section 5. This Act expires on March 31, 2022 unless otherwise extended by a subsequent act of the General
210 Assembly.

SYNOPSIS

Food and drink establishments suffered great losses since March, 2020 due to the pandemic including millions of dollars in lost sales and the loss of an tens of thousands of jobs in this State. This Act extends the provisions contained in HB 349 from the 150th General Assembly until March 31, 2022 with the goal of continuing the efforts to try and mitigate the losses this industry has suffered.

This bill extends the following provisions in HB 349: (1) Allowing an entity that has a valid on-premise license to sell alcohol to continue to alcoholic beverages as part of transactions for take-out, curbside, or drive-through food service so long as certain conditions are met; (2) Allowing a licensee to continue to use outdoor seating for serving of food and drinks so long as the licensee satisfies certain conditions; (3) Allowing the Commissioner to temporarily suspend a license only if the Commissioner has reasonable grounds to believe that public's safety is at risk and there has been a violation of the law; and (4) Allowing the Commissioner to hold hearings by electronic, telephonic, or remote means.