



SPONSOR: Sen. Lopez

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 192

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. Amend § 561, Title 4 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 561. Grounds for cancellation or suspension [Effective Mar. 31, 2022].

4 (a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom
5 or on behalf of whom it has been issued.

6 (b) The Commissioner may suspend any license and/or fine any licensee for the sale of alcoholic liquors if it has
7 reasonable grounds to believe that the licensee has committed any of the following violations, or may cancel any license for
8 the sale of alcoholic liquors for the following violations, if repeated and continuous:

9 (1) The licensee has violated any provision of this title or any regulation of the Commissioner pursuant hereto;

10 (2) The licensee has made any false representation or statement to the Commissioner in order to induce or
11 prevent action by the Commissioner;

12 (3) The licensee is not maintaining an acceptable bond, if said bond is required;

13 (4) The licensee is acting as an agent of a manufacturer of alcoholic liquor or has borrowed money or
14 accepted gratuities from such a manufacturer or any agent thereof;

15 (5) The licensee maintains a noisy, lewd, disorderly, or unsanitary establishment or has been supplying impure
16 or otherwise deleterious beverages or food;

17 (6) The licensee is in the habit of using dangerous or narcotic drugs, or is in the habit of using alcoholic
18 beverages to excess;

19 (7) ~~The licensee has sold alcoholic liquor in contravention of § 708 of this title; [Repealed.]~~

20 (8) The licensee has in the licensee's possession on the licensee's licensed premises or has sold or offered for
21 sale any alcoholic beverages not purchased or sold pursuant to this title;

(9) The licensee has misrepresented any alcoholic liquor sold by the licensee as purchased through the Commissioner or has in the licensee's possession, or has used any wrappers, labels, corks, caps, stamps or bottles not purchased from or through the Commissioner which are deceptively similar to those used by the Commissioner;

(10) The licensee has since the granting of the licensee's license been convicted of a felony or has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this title;

(11) The licensee has admitted guilt or has been adjudged guilty of violations of local, municipal, county or State regulations, ordinances or codes related to the operation of a licensed premises;

(12) There is any other reason which in the opinion of the Commissioner based on public convenience or necessity warrants cancelling or suspending the license;

(13) The licensee or a representative thereof has disciplined, threatened or otherwise penalized any person for refusing to violate or aiding the enforcement of the provisions of this title or the rules of the Commissioner.

(c) The Commissioner shall not cancel or suspend any license for the sale of alcoholic liquors or impose any fine for an alleged violation of § 708 or § 904 of this title where the licensee or its employee has made a reasonable effort to determine the age of a purchaser of alcoholic liquors. For purposes of this subsection, a licensee or its employee shall be deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of alcoholic liquors, the licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed, which sets forth information that would lead a reasonable man to believe the purchaser to be 21 years of age or older.

(d) Any of the grounds for refusal of a license as provided for in § 543 of this title shall also be adequate grounds for suspension of a license.

(e) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was granted in violation of § 546(b) of this title, or any rule enacted pursuant to § 546(d) of this title.

(f) If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(g) of this title has been suspended, then the Commissioner shall suspend any license or extension of an existing license granted in reliance on such Certificate of Compliance until such time as the Commissioner receives notice from the appropriate political subdivision that such Certificate has been reinstated. If the Commissioner receives notice from the appropriate political subdivision that any Certificate of Compliance issued to satisfy an applicant's duty under § 543(g) of this title has been canceled, then the Commissioner shall revoke any license or extension of an existing license granted in reliance on such Certificate of Compliance.

(g) The Commissioner may suspend any license for the sale of alcoholic liquors held by any taproom or restaurant or fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the

operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 65 dBA, but less than 75 dBA, when measured at any location 100 feet or more from the licensed premises' real property boundary. The Commissioner shall suspend any license for the sale of alcoholic liquors held by any taproom or restaurant and fine any licensee holding such a license if it has reasonable grounds to believe that the licensee has operated, caused the operation of or permitted the operation of any stationary source of sound in such a manner as to create an operative average sound level which is equal to or greater than 75 dBA when measured at any location 100 feet or more from the real property boundary of the licensed premises. For the purpose of this section, "operative average sound level" means the energy average of the A-weighted sound pressure level during the business hours of operation of the licensed premises. The operative average sound level may be determined by an average of not less than 3 individual decibel readings taken not less than 10 minutes apart and taken from the same location. Provided however, that nothing in this subsection shall apply within the boundaries of any municipality.

(h) [Repealed.]

Section 2. Amend § 708, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 708. Prohibition of sales to certain persons.

(a) No person or licensee shall sell any alcoholic liquor to any:

(1) Individual who has not reached the age of 21 years, except that in any prosecution for an offense under this paragraph it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older;

(2) Person to whom such sale is prohibited;

(3) Individual who habitually drinks alcoholic liquor to excess, or to whom the Commissioner and/or Division has, after investigation, decided to prohibit the sale of such liquor because of an appeal to the Commissioner and/or Division by the husband, wife, father, mother, brother, sister, employer or other person depending upon, employing or in charge of such individual, or by the mayor or other competent representative of any city, town, or other incorporated place; the interdiction in such case shall last until removed by the Commissioner and/or Division.

(b) No sale made to any person mentioned in this section, other than an individual who has not reached the age of 21 years, shall constitute a misdemeanor unless the Commissioner and/or Division has informed the seller, by registered letter, that it is forbidden to sell to such person or unless the fact is otherwise known to the seller.

81 (c) If a licensee is determined to have sold alcoholic liquor in contravention to this section, the licensee shall be
82 responsible for the payment of all costs and be fined not less than \$250 nor more than \$500 for the first offence, not less
83 than \$500 nor more than \$1,000 for the second offence, and not less than \$1,000 nor more than \$2,000 for each subsequent
84 offence. After each offence, the licensee is responsible for re-training all individuals at their establishment engaged in
85 point-of-sale transactions involving alcoholic liquors and must provide evidence of re-training to the Commissioner upon
86 the Commissioner's request.

SYNOPSIS

Under current Delaware law a license to sell alcohol may be subject to revocation or suspension by the Commissioner of Alcoholic Beverage Control or criminal charges for selling alcohol to a minor. This is so even though the licensee is not directly involved in the sale and may have taken significant steps to prevent such activity by employees. This bill updates the current law to provide for a system of fines for a licensee when alcohol is sold to a minor and removes the current authority to revoke or suspend a license under these circumstances. It does not change current law with respect to repercussions for an individual actually carrying out the sale.

Author: Senator Lopez