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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 290

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

3 § 512 Licenses.

4 (a) Any person, who is the owner or lessee, or who is recognized by the Commissioner as being in charge of a
5 hotel, beer garden, motel, taproom, restaurant, motorsports speedway, concert hall, horse racetrack, multi-purpose sports
6 facility, club or multiple activity club, may apply to the Commissioner for a license to purchase spirits, beer, or wine from
7 an importer and to receive, keep and sell such spirits, beer, or wine either by the glass or by the bottle for consumption on
8 any portion of the premises approved by the Commissioner for that purpose. Such a license entitles a club to sell such
9 spirits, wine, or beer only to members of that club. A multiple activity club which holds such a license may apply for an
10 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
11 who is duly registered in accordance with a bylaw or rule of such club, approved by the Commissioner, provided that if the
12 Commissioner determines that any applicant is not a multiple activity club, as defined in § 101 of this title, the application
13 shall be denied. There shall be no age restrictions on persons permitted on the premises of a licensed multiple activity club.

14 (1) Notwithstanding any law, regulation, or rule to the contrary, any restaurant, brewpub, tavern, or taproom,
15 or other entity with a valid on-premise license issued pursuant to chapter 5, subchapter II of this title may sell alcoholic
16 beverages in transactions for take-out, curbside, or drive through service.

17 (2) All alcoholic beverages sold for off-premise consumption under this subsection must comply with all of
18 the following requirements:

19 a. Be sold in containers that are securely closed.

20 b. Not exceed three 750 ML bottles of wine, one case of beer, and one liter of spirits per customer per

21 day.

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

24 § 524 Notice of application.

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

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

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

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

39 (2) All property owners within 1,000 feet from any point on the property boundary line of the premises to
40 which the license is to apply if the premises is located within $\frac{1}{4}$ of a mile of a riverfront, beachfront or other open
41 water, or if the applicant intends to include space for outside dining, outside entertainment or the outside service or
42 consumption of alcoholic beverages;

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

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

48 "[Name of applicant] has on [Date of application] applied with the Alcoholic Beverage Control ("Commissioner")
49 for [Nature of application] for a premises located at [Location of the premises, including street and city]. Persons who are
50 against this application should provide written notice of their objections to the Commissioner. For the Commissioner to be
51 required to hold a hearing to consider additional input from persons against the application, the Commissioner must receive

52 one or more documents containing a total of at least 10 signatures of residents or property owners located within 1 mile of
53 the premises or in any incorporated areas located within 1 mile of the premises. The protest(s) must be filed with the
54 Alcoholic Beverage Control Commissioner at the 3rd Floor, Carvel State Office Building, 820 North French Street,
55 Wilmington, DE 19801. The protest(s) must be received by the Commissioner's office on or before [state a date at least 30
56 days after the application is filed]. Failure to file such a protest may result in the Commissioner considering the application
57 without further notice, input or hearing. If you have questions regarding this matter please contact the Commissioner's
58 Office."

59 (e) The term "substantive change" referenced in this section shall mean any of the following:

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

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

63 (3) Any change that would require a variance of the Commissioner's rules or suspension thereof and results
64 in:

65 a. Live entertainment on a licensed patio;

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

67 c. Wet bar on a licensed patio;

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

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

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

73 (1) An expansion of outdoor seating for serving of food and drinks that as of March 31, 2022 was approved by
74 the Commissioner.

75 (2) An expansion of outdoor seating for serving of food and drinks that meets all of the following
76 requirements:

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

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

- 81 2. Does not intrude upon the State's right of way, unless approved by the Delaware Department of
82 Transportation in writing.
- 83 3. Maintains current access, unless approved by Delaware Department of Transportation in writing.
84 4. Maintains proper access to the property for all emergency services.
85 5. Complies with the Americans Disabilities Act.
86 6. Adheres to all local noise ordinances.
87 7. Allows for the proper control over the distribution of alcoholic beverages.

88 b. Approval by the Commissioner regarding the service of alcohol on premises.
89 (g) Any plan approved by or submitted to the appropriate political subdivision and the Commissioner pursuant to §
90 524(f) may allow for the service of alcoholic beverages without the requirement to serve food.

91 (h) Any plan submitted to the appropriate political subdivision and the Commissioner pursuant to § 524(f) that
92 meets all of the requirements of § 524(f)(2) should not be denied approval absent exceptional circumstances.

93 (i) Any political subdivision that revokes or modifies its approval for an expansion of outdoor seating for serving
94 of food and drinks under § 524(f) of this section must notify the Commissioner within 30 days of such revocation or
95 modification.

96 § 543 Grounds for refusal of license; transfer or extension of premises.

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

- 100 (1) That the premises where the license is to be used are properly zoned for the applicant's intended use; and
101 (2) That all necessary permits have been approved; and
102 (3) That the applicant has complied with all other applicable licensing requirements of the appropriate
103 political subdivision.

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

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

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

112 § 561 Grounds for cancellation or suspension.

113 (h)(1) Notwithstanding any law, regulation, or rule to the contrary, the Commissioner may temporarily suspend
114 any license if the Commissioner has reasonable grounds to believe that the public's safety is at risk and that the licensee has
115 violated the provisions of Title 4.

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

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

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

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

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

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

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

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

133 § 562 Public hearing and right of appeal.

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

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

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

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

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

145 (c) The appeal shall state the grounds upon which a review is sought. After the appeal is filed, service shall be
146 made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and
147 papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as
148 practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review
149 of an appeal shall be on the record and the Superior Court shall take into account the experience and specialized
150 competence of the agency and the purpose under which the agency acted. Further, the Superior Court's review, in the
151 absence of fraud, shall be limited to whether the agency's decision is supported by substantial evidence on the record and is
152 free from legal error.

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

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

SYNOPSIS

This bill permanently removes the sunset provision of House Bill 1 to allow food and drink establishments who suffered great losses since March, 2020 due to the pandemic to continue to sell alcoholic beverages in transactions for take-out, curbside, or drive-through service and to use outdoor seating for serving of food and drinks so long as the licensee satisfies certain conditions. This bill also permanently provides the Commissioner the authority 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 to hold hearings by electronic, telephonic, or remote means.