



SPONSOR: Rep. Ulbrich & Sen. DeLuca ;  
Reps. Capano, Valihura, Keeley,  
Price; Sens. Bunting, Sokola,  
Simpson, Still

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO. 660

AN ACT TO AMEND TITLES 4 AND 29 OF THE DELAWARE CODE RELATING TO ALCOHOLIC  
LIQUORS AND TOBACCO ENFORCEMENT.

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

1           Section 1. Amend § 101 of Title 4 of the Delaware Code by deleting the current subsection 11 and  
2 renumbering subsections 12 through 15 as subsections 11 through 14.

3           Section 2. Further Amend § 101 of Title 4 of the Delaware Code by amending the renumbered subsection  
4 (11) entitled "Commissioner" by deleting the phrase "the member appointed to constitute the Commission" and  
5 replacing thereto as follows "the person appointed by the Governor and confirmed by the Senate who serves as the  
6 Alcoholic Beverage Control Commissioner for the State."

7           Section 3. Further Amend § 101 of Title 4 of the Delaware Code by inserting the following as a new  
8 subsection (15) as follows:

9                   “(15) ‘Division’ means ‘Division of Alcoholic Beverage Control & Tobacco Enforcement.’”.

10          Section 4. Further Amend § 101 of Title 4 of the Delaware Code by deleting the word "Commission" as it  
11 appears in Sections (20), (21), (24) and (25) and replacing thereto with the word "Commissioner".

12          Section 5. Amend § 103 of Title 4 of the Delaware Code by deleting the word "Commission" as it appears  
13 in subsection (b) and replacing thereto with the word "Commissioner".

14          Section 6. Further Amend Title 4 of the Delaware Code by adding a new Chapter 2 as follows:

15                   “CHAPTER 2. Transition Provisions.

16                   § 201. Transition provisions.

17                   (a)           All definitions and references to any commission, division, or agency which appear  
18                   in any other act or law are to be construed, to the extent they are consistent with this Act and

19 in connection with the function transferred by this act, as referring or relating to the agency,  
20 department, division, office or subdivision to which the function is transferred.

21 (b) All orders, rules and regulations made by any commission, division or agency which  
22 govern the functions of such commission, division or agency, and which are in effect on  
23 December 1, 2000, shall remain in full force and effect until revoked or modified in  
24 accordance with law by the agency, department, division, office or subdivision to which the  
25 functions are transferred.

26 (c) All investigations, petitions, hearings and legal proceedings pending before or  
27 instituted by, any agency, commission or division from which functions are transferred by this  
28 act and which are not concluded by December 1, 2000, shall continue unabated and remain in  
29 full force and effect to be completed by the agency, department, division, office or  
30 subdivision assigned under this act.”.

31 Section 7. Further Amend Title 4 of the Delaware Code by deleting the current Chapter 3 and replacing it  
32 as follows:

33 “CHAPTER 3. Delaware Alcoholic Beverage Control Commissioner.

34 § 301. Delaware Alcoholic Beverage Control Commissioner; Deputy Commissioner;  
35 qualifications; appointment; term; compensation.

36 (a) The Commissioner shall be a resident of Delaware and suitably educated and  
37 experienced to carry out the duties and responsibilities set forth in this Act. The  
38 Deputy Commissioner shall be a resident of a different county of the State of  
39 Delaware than the Commissioner and further shall be suitably educated and  
40 experienced to carry out the duties and responsibilities set forth in this Act as  
41 assigned by the Commissioner.

42 (b) The Commissioner and Deputy Commissioner shall be appointed by the Governor  
43 and confirmed by a majority of the members elected to the Senate and shall serve at  
44 the pleasure of the Governor.

45 (c) Until a Commissioner is confirmed by the Senate, the Secretary of Public Safety or  
46 his or her designee shall serve in this capacity on an acting basis.

(d) The Commissioner and Deputy Commissioner shall be compensated as provided for in the Annual Budget Act.

§ 302. Location of office.

The Office of the Commissioner shall be located in New Castle County.

§ 303. Employees.

Necessary staff as required shall be employed as required to carry out the work under the Act. After December 1, 2001, the Joint Sunset Committee will review the duties and responsibilities of the Commissioner to determine if additional staff, including hearing officer(s), is necessary. The Department of Public Safety shall appoint all employees for the Office of the Commissioner.

§ 304. Duties and powers of the Commissioner.

(a) The Commissioner, in accordance with the Delaware Administrative Procedures Act, shall:

(1) Adopt and promulgate rules and regulations not inconsistent with this Title or of any other law of the State, and all such rules and regulations shall have the force and effect of law; provided, however, that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;

(2) Establish by rules and regulations an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with this Title or with any other law of this State. However, such rules and regulations, as established by the Commissioner, shall not control or regulate:

- a. Recreational equipment located on the business premises of any business selling alcoholic beverages;
- b. Credit transactions between licensed wholesalers and licensed retailers, to the extent permitted by federal law;

c. Purchases of 1 case not to exceed 20 gallons of alcoholic beverages per day by the holder of a retail license from another holder of a retail license;

(3) Control the manufacture, possession, sale and delivery of alcoholic liquors in accordance with this Title; and control the purchase, possession, transportation and sale of alcoholic liquors by those licensed to manufacture or to sell; provided, however, that the Commissioner's power to control the sale of alcoholic liquors shall not be exercised in such a manner as to prevent any holder of a retail license for the sale of alcoholic liquors not for consumption on the premises where sold from giving a retail purchaser of a case or more of spirits and/or wine a discount not to exceed 10% of the total dollar sale;

(4) Grant, refuse or cancel licenses required by this Title for the manufacture or sale of alcoholic liquor, or other licenses required by this Title in regard thereto, and to transfer any license granted;

(5) On petition signed by at least 10 individuals who are residents of the neighborhood, hear complaints in regard to the appointments of, or the conduct of business in, any establishment where alcoholic liquor is licensed to be sold. Ten days' notice of such hearings, together with a recital of the complaint, shall be sent by registered mail by the Commissioner's office to the address of the holder of the license for the establishment and like notice shall be delivered at the establishment by affixing the notice addressed to the holder of the license to the outside of an entrance door to the establishment. The hearings shall be conducted by the Commissioner and shall be public. The Commissioner shall for the purpose of such hearings have power to issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of pertinent books, payrolls, accounts, papers, records and documents. In case any person summoned to testify or to produce any such written or printed

105 evidence shall refuse, without reasonable cause, to be examined or to  
106 answer a legal and pertinent question or to produce any such written or  
107 printed evidence, the Commissioner conducting the hearing may certify the  
108 fact of any such refusal to the Superior Court of the county in which such  
109 hearing is held and the Court may proceed against the person so refusing as  
110 for a contempt and punish such person in the same manner as persons are  
111 punished for contempt of Court;

112 (6) Determine and publish standards for the manner in which the  
113 dining room or dining rooms of a hotel, restaurant or club shall be equipped  
114 in order to be allowed to exercise the privilege of the sale of alcoholic  
115 liquors therein; and examine the plans or premises proposed for use as a  
116 dining room and authorize their use in connection with a license to sell  
117 alcoholic liquors, but such authorization shall not prevent the requirement  
118 by the Commissioner of future alterations in accordance with published  
119 standards;

120 (7) Compel the attendance of witnesses and the production of  
121 contracts, papers, books, accounts and other documents. Subpoenas issued  
122 shall be signed by the Commissioner and may be served by any sheriff,  
123 deputy sheriff, constable or any agent of the Division and return thereof  
124 made to the Commissioner. The Commissioner may enforce compliance  
125 with a subpoena issued pursuant to this subsection by filing a motion to  
126 compel in the Superior Court, which shall have jurisdiction over the matter.  
127 The Court may award costs and attorney fees if it determines that  
128 noncompliance with a Commissioner subpoena was unjustified, intentional,  
129 or in bad faith.

130 (8) Act, for purposes of this Title, as the competent authority in  
131 connection with other matters pertinent thereto;

- (9) Make an annual report submitted to the Governor and members of the General Assembly setting forth all matters of interest and all statistics concerning liquor regulation and control in the State, including:
- a. The number of licenses of each variety issued within the State;
  - b. The name and address of each person licensed to manufacture or to sell alcohol, spirits, wine and beer;
  - c. The amount of alcohol, spirits, wine and beer sold within the State;
  - d. The number of licenses of each kind granted and the number cancelled during the year; and
  - e. Such other data as may make a complete report to the people of this State;
- (10) Negotiate and, with the approval of the Governor, enter into reciprocal agreements with the duly authorized officials of other states of the United States relative to the manufacture, importation, sale and transportation of alcoholic liquors in the several states;
- (11) Provide such special seals, labels and wrappers as deemed necessary for protection of the public against imitations, adulterations and frauds, and prescribe the proper use of the seals, labels and wrappers; and
- (12) Provide such warning signs as may be required by § 903(16) of this Title and distribute such signs to license holders and promulgate regulations with respect to the posting of said signs. A nominal fee may be charged by the Commissioner to cover printing, handling and distribution costs.

§ 305. Oath of Office of Commissioner and employees.

The Commissioner, Deputy Commissioner, and any hearing officer(s) shall, on entering office, take the oath of the Constitution of the State. Any other employee may be required to take the oath of the Constitution of the State at the discretion of the Secretary of Public Safety.

§ 306. Conflict of interest.

- (a) The Commissioner, Deputy Commissioner, and any hearing officer(s) or such person's spouse, or such person's son or daughter residing at such person's residence, shall not have a financial interest in any entity that sells, manufactures, or uses alcohol; provided, however, such persons may invest in mutual funds or similar financial instruments that hold no more than a 10% interest in any such entity.
- (b) Neither the Commissioner nor any person employed in the Office of the Commissioner shall receive any commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this act to purchase or sell alcoholic liquors; provided, however, that nothing in this section shall prevent the Commissioner, Deputy Commissioner, hearing officer(s) or employee from purchasing and keeping alcoholic liquors in his or her possession for the personal use of him or herself, members of his or her family or his or her guests if such purchase is otherwise permitted by this Title.
- (c) The Commissioner and the Deputy Commissioner shall annually file with the Public Integrity Commission the Financial Report pursuant to Title 29, Section 5813.

§ 307. Commissioner's statement of interest in liquor business.

When notified of appointment as Commissioner or Deputy Commissioner, the individual so notified shall furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every interest, direct or indirect, and however small, held or owned by him or her as a member or as a stockholder in any partnership, corporation or other association engaged in the sale or in the manufacture of alcoholic liquors or in any undertaking, industry or business in which alcoholic liquors are used or required and prior to taking the oath of office the Commissioner and Deputy Commissioner must wholly and fully dispose of all interests. One copy of the statement shall be inserted in the permanent records of the Office of the Commissioner open to public inspection.

§ 308. Promulgation, repeal and amendment of rules and regulations.

- (a) All rules and regulations of the former Alcoholic Beverage Control Commission currently in place as of the effective date of this act shall remain in full force and effect until revoked or modified in accordance with the procedures set forth in this act.

(b) The Commissioner may make any regulation and may amend or repeal any regulation as the Commissioner deems necessary for carrying out this Title respecting internal economy and the conduct of business, and may amend or repeal any such regulation. Such regulations shall be published in form open to public inspection at the Office of the Commissioner and in accordance with the Administrative Procedures Act.

(c) Any regulation made by the Commissioner and approved and published as provided by this chapter may be repealed or amended either by another regulation of the Commissioner, approved and published as so provided, or by an act of the General Assembly of this State.

§ 309. Bond.

The Commissioner and Deputy Commissioner shall give security by means of a corporate surety bond in the sum of not less than \$10,000 and every other person appointed to any position by the Commissioner shall, upon entering office, give security by means of a corporate surety bond in the sum of not less than \$2,000; conditioned that the Commissioner and the other of said persons will perform all the services imposed upon them by law or to which they are directed by the Commissioner and that they will not knowingly violate this Title or of any other law relating to the manufacture, sale, disposition or transportation of alcoholic liquors. The requirements of this section may be covered by a blanket surety bond covering the performance of the services imposed upon the Commissioner and the persons employed in the Office of the Commissioner. The cost of such bonds shall be borne by the Office of the Commissioner as part of the office's operating expense.

§ 310. Deposit of receipts with Division of Revenue.

All moneys received by the Commissioner shall be paid to the Division of Revenue of the Department of Finance. A monthly report of all receipts of the Commissioner shall be made to the State Treasurer.

§ 311. Property and profits of the Office of the Commissioner.

All property owned by the Office of the Commissioner and all associated profits shall be the property of the State.

§ 312. Financial statements of the Commissioner.

216                   The Commissioner shall render an account to the State Treasurer, in the manner and at  
217                   the time required by the latter, of its receipts and disbursements, and of its assets and liabilities.  
218                   The State Treasurer will not, however, require such reports to be rendered more often than  
219                   quarterly.

220                   § 313. Annual audit.

221                   The operation of the Office of the Commissioner shall annually be examined and audited  
222                   by the State Auditor of Accounts.”.

223                   Section 8. Further Amend Title 4 of the Delaware Code by enacting the following as a new chapter:

224                   “CHAPTER 4. Division of Alcoholic Beverage Control and Tobacco Enforcement.

225                   § 401. Division of Alcoholic Beverage Control and Tobacco Enforcement.

226                   The Division is established as follows for the administrative, ministerial, budgetary and  
227                   clerical functions for the enforcement of the alcohol laws of this Code and youth access to tobacco  
228                   laws in Title 11, Sections 1115 through 1127.

229                   § 402. Location of office.

230                   The main office of the Division shall be in New Castle County.

231                   § 403. Duties and powers of the Division.

232                   The Division shall:

- 233                   (a) Investigate, prevent, and arrest for violations of this Title, make seizure of alcoholic  
234                   liquor, manufactured, sold, kept or transported in contravention thereof, and  
235                   confiscate such alcoholic liquor whenever required by any provision of this Title;  
236                   (b) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for  
237                   sale in this State upon receipt of a complaint regarding health by entering into an  
238                   agreement with the Director of Forensic Science Laboratories of the Department of  
239                   Health and Social Services to test alcoholic liquor product when requested by the  
240                   Division. This subsection does not apply to home breweries.  
241                   (c) Only require an inventory by a package store licensee if it has evidence to support a  
242                   finding that such licensee has violated this title.

243                   § 404. Employees of the Division.

The Department of Public Safety shall appoint, employ or dismiss every officer or employee necessary for carrying out the work of the Division, establish salaries, subject to the Annual Appropriation in the Budget Act, and assign them their official titles and duties, and engage the services of experts and persons engaged in the practice of a profession at the discretion of the Secretary of Public Safety. At the discretion of the Secretary of Public Safety, officers and employees appointed by the Department of Public Safety shall have the police powers of constables and other police officers of the State, counties and other subdivisions of the State, and they shall be conservators of the peace throughout the State, and they shall be eligible for certification by the Council on Police Training, and may suppress all acts of violence and enforce the provisions of this Title.”.

Section 9. Further Amend Title 4 of the Delaware Code by deleting the word “commission” wherever it appears in Chapter 5 and replacing it thereto with the word “Commissioner”.

Section 10. Further Amend Title 4 of the Delaware Code by deleting the word “commission” wherever it appears in §§ 704(a)(4), 708(b), 901(3), 902(4), 903(3), 903(10), 906(c), 912 and 916 and replacing thereto with “Commissioner and/or Division”.

Section 11. Further Amend Title 4 of the Delaware Code by deleting the word “commission” whenever it appears in §§ 701, 702, 703, 704, 707, 709, 710, 714, 715, 717, 718, 719, 721, 723, 724, 725, 905(a), 908, 909, 910, 913, 914, 915, 1103 and 1104 and replacing thereto with the word “Commissioner”.

Section 12. Further Amend Title 4 of the Delaware Code by deleting the word “commission” wherever it appears in § 907 and replacing thereto with “Director”.

Section 13. Further Amend Title 4 of the Delaware Code by deleting the word “commission” wherever it appears in §§ 1101, 1102, 1106, 1107, 1108, 1109 and 1110 and replacing thereto with “Division”.

Section 14. Further Amend Title 4 of the Delaware Code by deleting the current Section 1105 and replacing as follows:

“§ 1105. Retention of seized property; return to owner; disposition of alcoholic liquor.

All property seized and delivered into the possession of the Division shall be disposed of in the following manner:

- (1) The enforcement officers of the Division or the peace officers who seized the property shall give written notice to the person whom they reasonably believe to be the owner of the

property, and to the person from whom the property was seized, if they reasonably believe such person is not the owner, that such person may within 10 days of the date of notice and upon proof, satisfactory to the Commissioner that such property had not been used in connection with any violation of any of the provisions of this title, or of the rules of the Commissioner or both, if so used, that the use was without the knowledge, acquiescence or consent of the rightful owner, his agent, employee or servant, return said property to the rightful owner. Any dispute between the enforcement personnel of the Division and the person believed to be the rightful owner or the person from whom the property was seized, shall be resolved by a hearing before the Commissioner. The Commissioner's decision shall be final and conclusive unless any party, having appeared before the Commissioner, appeals to the Superior Court of the State within 10 days of the date of the written decision.

- (2) Any property seized pursuant to this chapter which consists of alcoholic liquor and its container may, after the provisions of subdivision (1) of this section have been complied with, be offered for sale to the licensed Delaware importers of alcoholic liquor at the prevailing price paid by the importers for like brands and quality. If the alcoholic liquor is distributed in this State by more than 1 licensed importer, then the Commissioner shall offer said seized alcoholic liquor to all importers who engage in the sale of such brand of alcoholic liquor. If the seized alcoholic liquor is purchased by a licensed Delaware importer, the importer shall issue to the Commissioner a voucher showing at least the following facts:
- a. The date of the purchase;
  - b. The purchase price of each item purchased;
  - c. The quantity and nature of the item purchased.

At the subsequent direction of the Commissioner, the licensed Delaware importer which purchased the liquor shall:

1. If the owner of the alcoholic liquor or the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be found guilty of the offenses in violation of the Liquor Control Act or the rules of the Office of the Commissioner or both, issue its check payable to the Office of the Commissioner in the amount of the total purchase price shown on the voucher, which amount shall be applied

by the Commissioner as provided in § 1110 of this chapter as proceeds of a sale  
authorized by order of Court; or

2. If the owner of the alcoholic liquor and the person from whom the liquor was seized, if different from the person reasonably believed to be the owner, shall be acquitted of the offenses alleged to have been in violation of the Liquor Control Act or the rules of the Commissioner, or both, issue its check payable to such person, or, at such person's election, deliver alcoholic liquor of the same or similar nature and quantity described in the voucher to such person.

- (3) The enforcement officers of the Division with the advice of other peace officers of this State and/or the Department of Justice may retain all or part of the alcoholic liquor and its containers seized for use as evidence for as long a period as they deem necessary. Thereafter it may be disposed of pursuant to this chapter.

- (4) All other such seized property shall be disposed of as is provided in this chapter.”.

Section 15. Further Amend Title 4 of the Delaware Code by deleting the word “commission” wherever it appears in Chapter 12 and replacing it thereto with the word “Commissioner”.

Section 16. Further Amend Title 4 of the Delaware Code by deleting the current language of § 541(a) and replacing thereto as follows:

“The Commissioner shall distribute and receive all of the applications for licensure under this chapter, and shall refer the application to the Division for investigation, and if it appears that any application should not be granted, the Commissioner shall so notify the applicant stating the cause for denial.”.

Section 17. Further Amend Title 4 of the Delaware Code by deleting in Section 541 subsection (c) and replacing thereto as follows:

“(c) The Commissioner’s decision shall be final and conclusive unless within 10 days after notice thereof a party to such hearing shall appeal to the Superior Court of the county in which the license would operate. Unless otherwise agreed by all parties, in every appeal the cause shall be first decided by an arbitration conducted pursuant to the Superior Court Rules of Civil Procedure by a Superior Court Commissioner from the record, and the Superior Court Commissioner may affirm, reverse or modify the Commissioner’s decision. The Commissioner’s findings of fact shall not be set aside unless the Superior

331 Court Commissioner determines that the record contains no substantial evidence that would reasonably  
332 support the findings. If the Superior Court Commissioner finds that additional evidence should be taken,  
333 the Superior Court Commissioner may take the additional evidence or remand the cause to the  
334 Commissioner for taking additional evidence on the record. If the Superior Court Commissioner finds that  
335 the Commissioner has made an error of law, the Superior Court Commissioner shall reverse or modify the  
336 Commissioner's decision and render an appropriate judgment.”.

337 Section 18. Further Amend Title 4 of the Delaware Code by inserting in Section 541 the following new  
338 subsection (d) as follows:

339 “(d) The Superior Court may affirm, reverse or modify the decision of the Superior Court  
340 Commissioner or the Commissioner. The findings of fact by the Superior Court Commissioner or the  
341 Commissioner shall not be set aside unless the Court determines that the record contains no substantial  
342 evidence that would reasonably support the findings. If the Court finds that additional evidence should be  
343 taken, the Court may take the additional evidence or remand the cause to the Superior Court Commissioner  
344 or the Commissioner for taking additional evidence on the record. If the Court finds that the Superior Court  
345 Commissioner or Commissioner has made an error of law, the Court shall reverse or modify the decision of  
346 the Superior Court Commissioner or Commissioner and render an appropriate judgment.”.

347 Section 19. Further Amend Title 4 of the Delaware Code by deleting in Section 562 subsection (d) and  
348 replacing thereto as follows:

349 “(d) In such action, a petition, which need not be verified, but which shall state the grounds upon  
350 which a review is sought, shall be served upon the Commissioner. After the petition is filed, service shall  
351 be made by the Sheriff upon the Commissioner. With the answer, the Commissioner shall certify and file  
352 with the Court all documents and papers and a transcript of all testimony taken in the matter, together with  
353 the Commissioner's findings therein. Unless otherwise agreed to by all of the parties, in every appeal the  
354 cause shall be first decided by arbitration conducted by a Superior Court Commissioner pursuant to the  
355 Superior Court Rules of Civil Procedure. The decision of the Superior Court Commissioner may be  
356 reviewed by the Superior Court in the same manner as is provided in civil cases.”.

357 Section 20. Further Amend Title 4 of the Delaware Code by inserting in Section 562 the words “arbitrator  
358 or the” between “the” and “Court” in the second sentence of subsection (e).

359           Section 21. Further Amend Title 4 of the Delaware Code by deleting the phrase “Alcoholic Beverage  
360 Control Commission” wherever it appears in Chapter 12 and replacing it thereto with the phrase “Alcoholic  
361 Beverage Control Commissioner”.

362           Section 22. Further Amend Section 8204, Title 29 of the Delaware Code by striking said section in its  
363 entirety and substituting in lieu thereof the following:

364           “§ 8204. Division of Alcoholic Beverage Control and Tobacco Enforcement.

365           The Division of Alcoholic Beverage Control and Tobacco Enforcement is established having  
366 powers, duties and functions as set forth in the new Chapter 4, Title 4 of the Delaware Code and the youth  
367 access to tobacco laws in Title 11, Sections 1115 through 1127.”.

368           Section 23. Further Amend Section 10161, Title 29 of the Delaware Code by deleting the phrase  
369 “Alcoholic Beverage Control Commission” and replacing it thereto with the phrase “Alcoholic Beverage Control  
370 Commissioner”.

371           Section 24. The Commission and the Division shall be subject to review under Chapter 102, Title 29, The  
372 Delaware Sunset Act.

373           Section 25. This Act takes effect December 1, 2000.

#### SYNOPSIS

          This bill replaces the Alcoholic Beverage Control Commission with the position of Alcoholic Beverage Control Commissioner, and delineates the duties of the Commissioner and the Division of Alcoholic Beverage and Tobacco Control under the Department of Public Safety.