



SPONSOR: Rep. D.E. Williams & Sen. Cloutier & Sen. Connor
Rep. Schwartzkopf

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 394

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 Title 4, § 543 of the Delaware Code by making insertions as shown by underlining and deletions
2 as shown by strike through as follows:

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

4 (a) The Commissioner shall refuse to grant a license to be used in any county or subdivision thereof, if contrary to
5 any prohibitory law then in force, in such county or subdivision thereof.

6 (b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would
7 reasonably support a belief that:

8 (1) Except for restaurants, there are sufficient licensed premises in the locality; or
9 the granting of a license in the locality stated in the application is not otherwise demanded by public interest or
10 convenience;

11 (2) The applicant is an importer of alcoholic liquors and has not furnished an acceptable bond for the
12 purpose of assuring tax payments;

13 (3) The applicant appears to be financially irresponsible;

14 (4) The applicant has been provided with funds by, or has any forbidden connection with, a manufacturer,
15 supplier or importer of alcoholic liquors;

16 (5) The applicant has made false statements to the Commissioner;

17 (6) The applicant has been convicted of violating any of the liquor laws of this State, or has been
18 convicted and imprisoned for a crime;

19 (7) The applicant or any of the applicant's directors or officers, or any of the applicant's shareholders who
20 hold more than 10% of the outstanding issued shares has been convicted of violating any of the prohibited acts defined in
21 Chapter 47 of Title 16, the Uniform Controlled Substances Act, or its functional equivalent under the laws of the United
22 States, any state or territory or any other country, including, but not limited to, the illegal manufacture, delivery, trafficking,
23 possession or consumption of any controlled or noncontrolled substance, or the delivery or possession of illegal drug

paraphernalia or illegal hypodermic syringes or needles, or the conspiracy, solicitation or other attempt to engage in such illegal activities;

(8) As to a restaurant applicant, the applicant has failed to designate a substantial portion of the premises' floor space, as determined by the Commissioner, to be used for the storage, preparation, service and consumption of complete meals;

(9) As to a restaurant applicant, the applicant's projected or actual receipts from the sale of complete meals fails to represent a substantial portion of the establishment's total gross receipts as determined by the Commissioner;

(10) As to a restaurant applicant, the applicant's proposed premises or any proposed extension of the premises of an existing licensed restaurant is protested in accordance with the provisions contained in § 541(b) of this title or any applicable Commissioner rule, and the Commissioner finds that substantial evidence exists to conclude that the establishment's primary purpose will be the serving of alcoholic liquor to patrons. In reaching its decision, the Commissioner shall consider factors including, but not limited to, the number and sizes of bars in the establishment, the establishment's floor plan, an approximate percentage of the projected revenue to be derived from the sale of alcoholic liquor as compared to the percentage of revenue to be derived from the sale of complete meals, the establishment's seating capacity, storage and preparation area for food service, and the number of service employees employed, or to be employed, in the establishment and their functions.

(11) A substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term "substantial objection" shall include:

a. Any objection, or group of objections, presented to the Commissioner either individually or as a group, by persons who reside within the election district where the license is to operate and all contiguous election districts, sufficient to give the Commissioner reason to believe that a majority of the residents of the community within which the license is to operate oppose the issuance of the license; or

b. Any objection, or group of objections, presented to the Commissioner either individually or as a group, the content of which gives the Commissioner reason to believe the quality of life of the community within which the license is to operate will be adversely affected by the granting of the license.

(c) The Commissioner may refuse to grant a license to sell alcoholic liquor to any new establishment to be located in the vicinity of a church, school or college. The Commissioner may issue a license to any establishment located in the vicinity of a church, school or college when such establishment has been located in a place prior to the time any church, school or college may thereafter be located in the vicinity of such establishment.

(d) The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any ~~restaurant, tavern, taproom, hotel, store, or other~~ establishment for consumption ~~on or~~ off the premises, when there is an existing licensed

establishment of the same type within ~~1200 feet~~ .5 miles by accessible public road or street in any incorporated city or town, or within ~~1~~ 2 miles by accessible public road or street in any unincorporated or rural area, to be measured by actual distance and not driving route distance; provided, however, ~~that if there is an existing licensed establishment less than 1 mile but more than nine tenths of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may, in its discretion, grant such license; and provided further, however,~~ that the foregoing shall not apply:

(1) To any existing license or to the sale, transfer of ownership, or renewal thereof;

(2) To a club, ~~hotel or restaurant for consumption of alcoholic liquors on the premises off the premises, a Farm Wintery, a Brewery-Pub, a Microbrewery or a Craft Distillery;~~

(3) To any holder of an existing license who desires to move the location of his or her license to a location within 500 feet thereof by accessible public road or street; provided, however, that such licensee located in a shopping center or shopping mall may move the location of his license any distance within the same shopping center or shopping mall, whether such center or mall consist of 1 or more than 1 separate buildings.

(4) To an applicant for an off premises or taproom license that is located:

a) between 1800 feet and .5 miles from an existing license of the same type in any incorporated city or town, if the applicant can provide a report, determined reliable by the Commissioner after written input from DATE, that indicates either:

1) a minimum yearly increase of 1% in the population of persons 21 years of age or older over the past 3 consecutive years measured from the month prior to the submission of the application, or

2) a minimum increase of 3% in the population of persons 21 years of age or older in the past year measured from the month prior to the submission of the application within a distance of .5 miles from the borders of the property where the applicant seeks licensure, or

b) between 1.5 miles and 2 miles from an existing license of the same type in any unincorporated or rural area if the applicant can provide a report, determined reliable by the Commissioner after written input from DATE, that indicates either:

1) a minimum yearly increase of 1% in the population of persons 21 years of age or older over the past 3 consecutive years measured from the month prior to the submission of the application, or

2) a minimum increase of 3% in the population of persons 21 years of age or older in the past year measured from the month prior to the submission of the application within a distance of 1.5 miles from the borders of the property where the applicant seeks licensure.

(e) Any holder of an existing license who desires to move the location of ~~his or her~~ the license due to the destruction of ~~his~~ the building, loss of lease, diversion of highway traffic pattern, or similar reason beyond the control of the

licensee, shall have preference in the issuance of a new license provided that the application satisfies ~~this subsection~~ and all other requirements under this title, except those found in § 543(d) and § 543(d)(4).

(f) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any restaurant or eating place located on or a part of the Delaware Turnpike.

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

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

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

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

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

(h) Any existing restaurant which was licensed by the State to permit the sale of alcoholic beverages and which was in compliance with applicable state, county or municipal laws and regulations as of June 14, 1991 shall be permitted to continue to operate in the same manner as it was operating on said date so long as said license is in effect, notwithstanding any ordinance or other restriction subsequently enacted by a municipal corporation.

Section 2. Amend Title 4, § 554 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 554. License fees.

(a) For a license to sell alcoholic liquor in a hotel or restaurant the biennial license fee shall be \$1,000.

(b) For a license to sell alcoholic liquor on a boat the biennial license fee shall be \$1,000.

(c) For a license to sell alcoholic liquor in the passenger cars of a railroad the biennial license fee shall be \$600 for each railroad.

(d) For a license to sell alcoholic liquor in a club, to members of that club, the biennial license fee shall be \$300 if the club has an active membership in good standing of less than 400 members; or \$600 if the club has an active membership in good standing of 400 or more members.

(e) For a license to sell beer and/or wine only in a restaurant the biennial license fee shall be \$500.

(f) For a license to sell beer only in a tavern the biennial license fee shall be \$500.

(g) For a license to sell alcoholic liquors in a taproom the biennial license fee shall be

\$1,000.

(h) For a license to sell alcoholic liquor from a hotel, restaurant, taproom, or store, not for consumption on the premises, the biennial license fee shall be \$1,000.

(i) For a license to sell alcoholic liquors at gatherings of persons, the license fee shall be as follows:

(1) Daily license. -- For a group-type gathering license, the license fee shall be \$5.00 for each such license granted, unless the said license shall be for a period of more than 2 days in which case the license fee shall be \$5.00 plus the additional sum of \$2.00 for each such additional day or unless the said license shall be for any holiday specified in § 709(d) of this title, in which case the license fee shall be an additional \$5.00 for each such holiday.

(2) Biennial license. –

a. For a biennial premises type gathering license for a facility in which not more than 25 gatherings of persons at which alcoholic liquors are to be sold are to be held, the biennial license fee shall be \$200.

b. For a biennial premises type gathering license for a facility in which more than 25 but not more than 75 such gatherings of persons are to be held, the biennial license fee shall be \$400.

c. For a biennial premises type gathering license for a facility in which more than 75 such gatherings of persons are to be held, the biennial license fee shall be \$1,000.

d. For the holder of a biennial premises type gathering license to sell alcoholic liquor on any holiday specified in § 709(d) of this title, the biennial license fee shall be:

1. An additional \$200 for a license issued pursuant to paragraph (i)(2)a. of this section;

2. An additional \$300 for a license issued pursuant to paragraph (i)(2)b. of this section; and

3. An additional \$400 for a license issued pursuant to paragraph (i)(2)c. of this section.

(j) For a license to "manufacture" and to "sell" beer and cider, the biennial license fee shall be based upon annual production and shall be computed as follows: \$1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer and cider per year; \$3,000 for a microbrewery or brewery manufacturing more than 25,000 but not more than 50,000 barrels of beer and cider per year; \$6,000 for a microbrewery or brewery manufacturing more than 50,000 but not more than 100,000 barrels of beer and cider per year; and \$9,000 for a microbrewery or brewery manufacturing more than 100,000 barrels of beer and cider per year.

(k) For a license to operate a distillery for distillation or rectification, the biennial license fee shall be based upon annual production and shall be computed as follows: For the first 500 gallons, \$100; for the next 5,000 gallons, or fraction thereof, at the rate of 6 cents per gallon; for the next 10,000 gallons, or fraction thereof, at the rate of 4.5 cents per gallon; for the

next 50,000 gallons, or fraction thereof, at the rate of 3 cents per gallon; for the next 100,000 gallons, or fraction thereof, at the rate of 1.5 cents per gallon; for each gallon in excess of 165,500 gallons, at the rate of three quarters cent per gallon.

(l) For a license to bottle beer the biennial license fee shall be \$100 for the first 500 barrels or less, and \$100 for each additional 500 barrels, or fraction, bottled.

(m) For a license to operate a winery or to bottle and sell wine the biennial license fee shall be \$1,500.

(n) For a license to import or to ship alcoholic liquor, other than beer and wine, into this State and to sell and deliver such alcoholic liquor as provided in this chapter the biennial license fee shall be \$7,500; but a sale and delivery of alcoholic liquor to pharmacists, physicians, dentists, veterinarians, wholesale druggists, manufacturing plants where the alcohol is used in scientific work, or for the manufacture of pharmaceutical products shall not be subject to the license fee.

(o) For a license to import or to ship beer into this State and to sell and deliver such beer the biennial license fee shall be \$3,000; and for a license to import or to ship unlimited amounts of wine into this State and to sell and deliver such wine the biennial license fee shall be \$3,000. A license for a limited wine importer, an importer that imports, sells and delivers less than 1000 cases of wine per year, shall be \$200. A limited wine importer need not pay the application fee required by subsection (x) of this section.

(p) For a license to sell alcoholic liquor as an off-site caterer the biennial license fee shall be \$500.

(q) For a license to transport a stock of alcoholic liquor from the place where sale or storage of such stock has been authorized to another location, the license fee shall be fixed by the Commissioner.

(r) For a license to purchase sacramental wine, no license fee shall be charged.

(s) For a temporary license, the license fee shall be not less than 1/2 nor more than double the amount of the annual license fee for a regular license for the same privilege, in the discretion of the Commissioner.

(t) For a license to sell alcoholic liquor at a horse racetrack the biennial license fee shall be \$3,000.

(u) For a license to sell alcoholic liquor at a motorsports speedway the biennial license fee shall be \$3,000.

(v) For license to sell alcoholic liquors as a ship's chandler the biennial license fee shall be \$1,000.

(w) For a license for a multiple activity club to sell alcoholic beverages to any person who is a member of such club or a guest of a member of such club, the biennial license fee shall be \$1,500.

(x) Application process fee. —

(1) If any application for a license under this title requires any investigation by the staff or a hearing by the Commissioner before the Commissioner reaches a decision on the application, the applicant shall pay an application process fee of \$1,000 in addition to any other fees required by this title or the rules of the Commissioner. The application process fee is not refundable regardless of the decision of the Commissioner. This provision for an application process fee does not apply to a gathering of persons under § 514 of this title, a limited suppliers license issued pursuant to § 501 of this title, a license to sell on Sunday, and a tasting permit. This provision for an application process fee shall not apply to

applications for change of officers, directors or stockholders of a corporate licensee if there is no change in the majority of stockholders or majority of directors. Six hundred dollars of the application process fee shall be retained by the Commissioner and deposited in a special fund for the sole purpose of providing for the implementation, administration and enforcement of the Delaware Responsible Alcoholic Beverage Server Training Program established pursuant to Chapter 12 of this title.

(2) For a new application for a license to sell alcoholic beverages not for consumption on the premises the applicant shall, in lieu of the fee described in subpart 1 of this subsection, pay an application fee of \$50,000 of which \$2,500 will constitute a non-refundable application fee to be paid upon submission of the application. The remainder of the fee shall be paid upon issuance of the license and shall be distributed in the following manner: \$7,500 to the Commissioner, \$15,000 to DATE, and \$25,000 to Delaware's State Public School Improvement Fund which shall be administered by the Secretary of Education.

(3) For a transfer or a change of 50% or more of the ownership of a license to sell alcoholic beverages not for consumption on the premises the applicant shall, in lieu of the fee described in subpart 1 of this subsection, pay a non-refundable application fee of \$5,000 which shall be distributed as follows: \$3,000 to the Commissioner and \$2,000 to DATE.

(y) For a license to sell alcoholic liquor in a dinner theater the biennial license fee shall be \$1,000.

(z) For a license to sell alcoholic liquors as a caterer for consumption on the premises where sold the biennial license fee shall be \$1,000.

(aa) For a license as a "bottle club" authorized by § 515A of this title the biennial license fee shall be \$300.

(bb) For a license to sell alcoholic liquors in a cabaret the biennial license fee shall be \$2,000.

(cc) For a license as an air passenger carrier, as defined in § 512(i) of this title, the biennial license fee shall be \$1,000.

(dd) For a license to conduct wine auctions the biennial license fee shall be \$1,500. For a gathering license to conduct a wine auction by a nonprofit organization the fee shall be \$50 per event.

(ee) For a license to permit spirits, wine and beer tasting the biennial license fee shall be \$150.

(ff) For a farm winery license the biennial license fee shall be \$1,500.

(gg) For a brewery-pub license the biennial license fee shall be \$2,000.

(hh) For a license to sell alcoholic liquors at a multi-purpose sports facility the biennial license fee shall be \$3,000.

(ii) For a license to sell alcoholic liquors at a bowling alley the biennial license fee shall be \$1,000.

(jj) For a license as a "direct shipper" as provided in § 526 of Title 4 the biennial license fee shall be \$100.

(kk) Each of the licensees identified in subsections (a)-(h), (t)-(w), (y), (z), (bb), (cc), (dd), (ff), (gg), (hh), (ii), and (mm) of this section, shall pay an additional annual fee of \$100. The Commissioner shall deposit said funds into a special

214 account designated as the "Overservice Investigation Fund." Said fund shall be utilized by the Division of Alcohol and
215 Tobacco Enforcement to pay overtime to its agents and/or to hire and equip additional agents for the purpose of
216 investigating and prosecuting licensees that serve intoxicated individuals.

217 (ll) For a permit to sell alcoholic liquors on a patio, the biennial fee shall be \$1,000. If the holder of a patio permit
218 desires a variance to Rule 42.1 [CDR 4-Rule 42.1], or a subsequently adopted rule, the biennial variance permit fee shall be
219 \$100 per variance.

220 (mm) For a license to sell alcoholic liquor in a concert hall the biennial fee shall be \$1,500.

SYNOPSIS

This Bill will modernize the process and requirements for issuance of liquor licenses for off premises consumption. The current process and requirements do not consider population growth. Minimum distance requirements are enhanced while increases in population growth will now be considered to arrive at a safety and convenience balance.

The funds acquired through higher license fees will be allocated to OABCC, DATE and the State Public School Improvement Fund. The OABCC can then invest in tools of efficiency, DATE can strengthen its enforcement capabilities, and our public schools will receive additional funding to be employed as the Secretary of Education deems appropriate.