

CHAPTER 6
FORMERLY
HOUSE BILL NO. 16

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 (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §101, Title 4 of the Delaware Code as follows:

§ 101. Definitions.

As used in this title, in addition to their usual meaning:

(1) "Alcohol" means ethyl alcohol produced by the distillation of any fermented liquid, whether rectified or diluted with water or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but it does not mean ethyl alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcoholic liquor" or "alcoholic liquors" include the 5 varieties of liquor defined in this section (alcohol, spirits, wine, beer and alcoholic cider) as well as every liquid or solid, patented or not, containing alcohol, spirits, wine, beer or alcoholic cider and capable of being consumed by a human being, and any liquid or solid containing more than 1 of the 5 varieties defined in this section is considered as belonging to that variety which usually has the higher percentage of alcohol. A concentrated alcoholic beverage shall be an "alcoholic liquor" for purposes of this title.

(3) "Appeals Commission" shall mean 3 persons, 1 from each County, appointed by the Governor with the advice and consent of a majority of the Senate.

(4) "Barrel," when used as a container for beer, means such container having a capacity of 31 United States standard gallons of 231 cubic inches.

(5) "Beer" means any beverage containing more than one half of 1 percent of ethyl alcohol by volume, obtained by the alcoholic fermentation of any infusion or decoction of barley malt and hops in water and includes, among other things, ale, porter, stout and other malt or brewed liquors.

(6) "Bottle" means any vessel that is corked, capped or stopped or arranged so to be and intended to contain or to convey liquids.

(7) "Cabaret" means an establishment where patrons are entertained by performers who dance, sing, play instruments or perform other legal acts for entertainment, but not to include a dinner theater, and where such entertainment may be performed during or after service or dinner, and where a minor, as defined in § 708 of this title, is to be denied admission to or permission to remain on premises after 9:00 p.m. (official eastern time) unless accompanied by a parent or by a legal guardian.

(8) "Caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings such as weddings, dinners, benefits, banquets or other similar events for consideration on a regular basis and duly licensed by the State as caterers with at least 60% of its gross receipts resulting from the sale of food.

(9) Without regard to its usual meaning, and by way of limitation, "alcoholic cider" means any fermented beverage made from apples, containing more than one half of 1 percent but not more than 7 percent of ethyl alcohol by volume. For purposes of this title, alcoholic cider shall be treated as within the definition of "wine" unless the specific language of a particular section indicates a contrary intent.

(10) "Club" means a corporation or association created by competent authority, which is the owner, lessee or occupant of premises operated solely for objects of national, social, patriotic, political or athletic nature, or the like, whether or not for pecuniary gain, and the property as well as the advantages of which belong to or are enjoyed by the stockholders or by the members of such corporation or association. A public golf course, open to all members of the public, whether privately or publicly owned, whose primary purpose is the operation of a golf course shall be included within meanings of this definition. Members of the public, utilizing the golf facility, shall be considered guests of the club.

(11) "Concentrated alcoholic beverage" shall mean any powders or crystals, liquid or any other substances which, after being mixed with sugar, water or any other nonalcoholic materials, ferments or otherwise becomes a wine, beer or other alcoholic beverage.

(12) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as the Alcoholic Beverage Control Commissioner for the State.

(13) "Concert hall" shall mean an indoor facility used to host live entertainment that is owned, leased, under easement, and/or operated by any person and that has a capacity of at least 600 patrons for any single event. In order for a facility to be licensed as a concert hall, the facility shall host a minimum of 250 live music events in any calendar year and shall be open at least 5 days per week. A facility meeting this definition may license the entire building, including patio, with the concert hall license.

(14) "Denatured alcohol" means ethyl alcohol or liquors containing ethyl alcohol to which substances or ingredients have been added to render the ethyl alcohol or liquors unfit for beverage purposes.

(15) "Disorderly house" means house, or reputed house, of prostitution, ill-fame or assignation.

(16) "Distillery," "winery" and "brewery" mean not only the premises whereon alcohol or spirits is distilled or rectified, wine is fermented or beer is brewed, but, in addition, the person owning, representing or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of alcoholic liquor in any form.

(17) "Division" means "Division of Alcohol and Tobacco Enforcement."

(18) "Establishment" means any place located physically in this State where alcoholic liquor of 1 or more varieties is stored, sold or used by authority of any law of this State, including a hotel, restaurant, tavern or club as defined in this section, or where alcoholic liquor of 1 or more varieties is manufactured by virtue of any law of this State.

(19) "Gathering of persons" or "gathering" means a banquet, picnic, bazaar, fair or similar private gathering or similar public gathering where food or drink are sold, served or dispensed by nonprofit organizations such as churches, colleges and universities, volunteer fire companies, political parties or other similar nonprofit groups having a common civic, social, educational or religious purpose, or where entrance tickets are sold or entrance fees are required by those nonprofit organizations.

(20) "Hotel" means any establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.

(21) "Import" means the transporting or ordering or arranging for the transportation or shipment of alcoholic liquor into the State whether by a resident of the State or otherwise.

(22) "Importer" means the person transporting or ordering, authorizing or arranging the transportation or shipment of alcoholic liquors into this State, whether the person is a resident or citizen of this State or not, said person being permitted to sell said alcoholic liquors only to those persons licensed to resell alcoholic liquors; provided, however, that nothing contained in this definition shall be construed as prohibiting an importer from selling such alcoholic liquors to either an active owner of that business for that person's use and not for resale or to a full-time, bona fide employee of that business for that person's use and not for resale; and provided further, that nothing contained in this definition shall be construed as prohibiting an importer from selling beer in "half-barrel" or "quarter-barrel" containers to the holders of a personal license. The Commissioner may enact such rules regulating the sale of alcoholic liquor to active owners and employees of licensed importers as it deems necessary.

(23) "License" means any license or permit to manufacture, to sell, to purchase, to transport, to import or to possess alcoholic liquor authorized or issued by the Commissioner under the provisions of Chapter 5 of this title.

(24) "Manufacture" means distill, rectify, ferment, brew, make, mix, concoct or process any substance or substances capable of producing a beverage containing more than one half of 1 percent of alcohol by volume and includes blending, bottling or other preparation for sale.

(25) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor and among others includes a distiller, a rectifier, a wine maker, a brewer, and includes a bottler or one who prepares alcoholic liquor for sale.

(26) "Mead" means an alcoholic beverage that is naturally fermented (not distilled or frozen) wherein the major source of fermentable sugars comes from honey.

(27) "Member of a club" means an individual who, whether as a charter member or admitted in accordance with the rules or the bylaws of the club, has become a member thereof, who maintains membership by the payment of dues in the manner established by the rules or bylaws, and whose name and address is entered on the list of members supplied to the Commissioner at the time of the application for a license under Chapter 5 of this title, or, if admitted thereafter, within 8 days after admission and payment of dues, if such dues are required. The Commissioner is authorized to extend the meaning of the words "member of a club" to include those who are granted temporary membership or membership of less than 1 year in accordance with a rule or bylaw of the club approved by the Commissioner. "Member of a club" which is a multiple activity club means a person who, pursuant to the charter, bylaws or rules of the club, is a member in good standing of such club, and whose name and address is supplied in writing to the Commissioner by the club within 8 days after admission to membership, or who holds a temporary membership in such club, pursuant to a charter provision, or bylaw or rule approved by the Commissioner.

(28) "Motorsports speedway" shall mean a motorsports speedway (including any contiguous land when being used in connection with its events) that is owned, leased, under easement, and/or operated by any person and having a seating capacity of at least 75,000 seats. A motorsports speedway may operate under its own license while using the premises of a license holder at a horse racetrack, but only to the extent that neither license holder uses the same portion of the premises at the same time and no commingling of inventory occurs. The converse of this shall also apply to a license holder at a horse racetrack using the premises of a motorsports speedway.

(29) "Multiple activity club" is a club as to which, in the determination of the Commissioner, the service of spirits, wine or beer is not the principal activity in the premises of the club as established by the following:

- a. Gross revenue of the club from the sale of spirits, wine and beer does not exceed 40% of its total annual revenue including dues, fees and assessments, and either
- b. Meals are served by the club at regular hours on at least 6 days of the week,
- c. The club has a physical facility, regularly used by members of the club, which is devoted primarily to activities other than the sale or consumption of spirits, wine or beer, or
- d. A public golf course, as defined in paragraph (10) of this section, may be licensed as a multiple activity club, however, is not subject to the requirements as set forth in paragraph (27)c. of this section.

(30) "Multi-purpose sports facility" shall mean a stadium owned and/or operated by the State, featuring minor league baseball games where admission fees are charged to the public and having a seating capacity of at least 4,000 seats, and excludes stadia which are operated and maintained by educational institutions, including, but not limited to, high schools, colleges or universities.

(31) "Off-site caterer" means any proprietorship, partnership or corporation engaged in the business of providing food and beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar events, that are held off the site of the caterer's business for consideration and on a regular basis. An off-site caterer must be duly licensed by the State under Title 30 as a caterer, with at least 60% of its gross receipts resulting from the sale of food.

(32) "Person" includes an individual, a partnership, a corporation, a club or any other association of individuals.

(33) "Preparation" means any medicine (patented or proprietary); any mixture containing drugs or mineral substances; any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, vinegar, cream, ointment or salve; any distillate or decoction, whether or not containing other substances in solution or suspension, that contains ethyl alcohol or any alcoholic liquor to any amount exceeding 1/2 of 1% by volume.

(34) "Residence" means the place occupied by a person as a domicile or otherwise, either permanently or temporarily, and includes not only the premises occupied, but also every annex or dependency thereof held under the same title as the premises occupied.

(35) "Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration and which has seating at tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.

(36) "Retailer" means the person permitted to sell alcoholic liquors in a store in the State, not for consumption on the premises.

(37) "Sale" means every act of selling as defined in this section.

(38) "Sell" means: solicit or receive an order for; keep or expose for sale; deliver for value or in any other way than purely gratuitously; keep with intent to sell; keep or transport in contravention of this title; traffic in; or for any valuable consideration, promised or obtained, directly or indirectly, or under any pretext or by any means whatsoever, procure or allow to be procured for any other person, to carry alcoholic liquors on one's person or to transport with one and with intent to sell the same, but not in any establishment where the sale thereof is allowed.

(39) "Spirits" means any beverage containing more than 1/2 of 1% of ethyl alcohol by volume mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey and gin.

(40) "Spirits, wine and beer tasting" means the consumption of spirits, wine and beer for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine and beer sampled is not to exceed 1 ounce for wine and beer and 1/2 ounce for spirits.

(41) "Taproom" means an establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises of beer as defined in this section.

(43) "Temporary Large Event" means a public or private gathering of more than one thousand (1,000) people where food or drink are sold, served or dispensed and which requires an entrance ticket or entrance fee to attend, including but not limited to a music festival, car show, auction, convention or rally.

(44) "Temporary Large Event Promoter" means the person arranging or promoting the temporary large event.

~~(4543)~~ "Traveler" means an individual guest or customer of a hotel, restaurant or tavern.

~~(4644)~~ "Vehicle" means any means of transportation by land, by water or by air, and includes everything made use of in any way whatsoever for such transportation.

~~(4745)~~ "Whoever," when used in reference to any offender under this title, includes every person who acts individually or by permission or agreement for any other person, and includes also such other person.

~~(4846)~~ "Wine" means any beverage containing more than 1/2 of 1% ethyl alcohol by volume obtained by the fermentation of the natural contents of fruits, vegetables or other products and other vinous liquors, and also includes such beverages when fortified by the addition of alcohol or spirits as defined in this section.

Section 2. Amend Title 4 of the Delaware Code as follows:

§ 512F. Any person licensed under §512 of this title hosting a temporary large event may share the profits from the event, including the profits from alcohol sales, with the temporary large event promoter, and such sharing of profits shall not be in violation of this title, including §561 of this title or any regulations promulgated by the Commissioner, provided that (1) the licensee shall be responsible for the purchase and resale or dispensing of all alcohol at the temporary large event as provided in and in compliance with this title and may not allow the temporary large event promoter to participate in such purchasing, reselling or dispensing, and (2) the temporary large event promoter shall, prior to the temporary large event, obtain a temporary large event license from the Commissioner. Application for a temporary large event license shall be on a form prescribed by the Commissioner, made under oath or affirmation and signed before two witnesses, containing a statement to the effect that the temporary large event promoter (i) will comply with this title and the regulations promulgated hereunder; (ii) agrees to submit to the jurisdiction of the Commissioner and the courts of the State of Delaware; (iii) is not a manufacturer, supplier or importer; (iv) has not been convicted of violating the liquor laws of this State or been convicted and

imprisoned for a crime; and (v) such other matters as the Commissioner may prescribe by rule or regulation. The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

Section 3. Amend §554, Title 4 of the Delaware Code as follows:

(oo) For a “temporary large event” license as provided in §512F of this title, the fee shall be \$500 for each temporary large event and no application process fee as permitted under §554(x) of this title shall be assessed.

Approved March 28, 2013