

AMENDMENTS TO HOUSE BILL NO. 790

Sponsor: REPRESENTATIVE P. COSTA

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1 Amend Bill, page 1, lines 1 through 29; page 2, lines 1
2 through 51, by striking out all of said lines on said pages and
3 inserting

4 Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as
5 reenacted, "An act relating to alcoholic liquors, alcohol and
6 malt and brewed beverages; amending, revising, consolidating
7 and changing the laws relating thereto; regulating and
8 restricting the manufacture, purchase, sale, possession,
9 consumption, importation, transportation, furnishing, holding
10 in bond, holding in storage, traffic in and use of alcoholic
11 liquors, alcohol and malt and brewed beverages and the
12 persons engaged or employed therein; defining the powers and
13 duties of the Pennsylvania Liquor Control Board; providing
14 for the establishment and operation of State liquor stores,
15 for the payment of certain license fees to the respective
16 municipalities and townships, for the abatement of certain
17 nuisances and, in certain cases, for search and seizure
18 without warrant; prescribing penalties and forfeitures;
19 providing for local option, and repealing existing laws,"
20 further providing for general powers of the Pennsylvania
21 Liquor Control Board, for board to establish State liquor
22 stores, for when sales may be made at Pennsylvania Liquor
23 Stores, for sales by Pennsylvania Liquor Stores, for shipment
24 of wine into Commonwealth and for limited wineries.

25 Amend Bill, page 2, lines 54 and 55; pages 3 through 243,
26 lines 1 through 30; page 244, lines 1 through 21, by striking
27 out all of said lines on said pages and inserting

28 Section 1. Section 207(b) and (e) of the act of April 12,
29 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and
30 amended June 29, 1987 (P.L.32, No.14), are amended to read:

31 Section 207. General Powers of Board.--Under this act, the
32 board shall have the power and its duty shall be:

33 * * *

34 (b) To control the manufacture, possession, sale,

1 consumption, importation, use, storage, transportation and
2 delivery of liquor, alcohol and malt or brewed beverages in
3 accordance with the provisions of this act, and to fix the
4 wholesale and retail prices at which liquors and alcohol shall
5 be sold at Pennsylvania Liquor Stores. Prices shall be
6 [proportional with prices paid by the board to its suppliers and
7 shall reflect any advantage obtained through volume purchases by
8 the board. The board may establish a preferential price
9 structure for wines produced within this Commonwealth for the
10 promotion of such wines, as long as the price structure is
11 uniform within each class of wine purchased by the board.] as
12 set forth by the board so long as the price of a particular item
13 is uniform throughout this Commonwealth. This pricing provision
14 shall not apply to special liquor orders authorized under
15 section 305(a). The board shall require each Pennsylvania
16 manufacturer and each nonresident manufacturer of liquors, other
17 than wine, selling such liquors to the board, which are not
18 manufactured in this Commonwealth, to make application for and
19 be granted a permit by the board before such liquors not
20 manufactured in this Commonwealth shall be purchased from such
21 manufacturer. Each such manufacturer shall pay for such permit a
22 fee which, in the case of a manufacturer of this Commonwealth,
23 shall be equal to that required to be paid, if any, by a
24 manufacturer or wholesaler of the state, territory or country of
25 origin of the liquors, for selling liquors manufactured in
26 Pennsylvania, and in the case of a nonresident manufacturer,
27 shall be equal to that required to be paid, if any, in such
28 state, territory or country by Pennsylvania manufacturers doing
29 business in such state, territory or country. In the event that
30 any such manufacturer shall, in the opinion of the board, sell
31 or attempt to sell liquors to the board through another person
32 for the purpose of evading this provision relating to permits,
33 the board shall require such person, before purchasing liquors
34 from him or it, to take out a permit and pay the same fee as
35 hereinbefore required to be paid by such manufacturer. All
36 permit fees so collected shall be paid into the State Stores
37 Fund. The board shall not purchase any alcohol or liquor
38 fermented, distilled, rectified, compounded or bottled in any
39 state, territory or country, the laws of which result in
40 prohibiting the importation therein of alcohol or liquor,
41 fermented, distilled, rectified, compounded or bottled in
42 Pennsylvania.

43 * * *

44 (e) [Through the Department of General Services as agent,
45 to] To lease and furnish and equip such buildings, rooms and
46 other accommodations as shall be required for the operation of
47 this act.

48 * * *

49 Section 2. Section 301 of the act is amended to read:

50 Section 301. Board to Establish State Liquor Stores.--(a)

51 The board shall establish, operate and maintain at such places

1 throughout the Commonwealth as it shall deem essential and
2 advisable, stores to be known as "Pennsylvania Liquor Stores,"
3 for the sale of liquor and alcohol in accordance with the
4 provisions of and the regulations made under this act; except
5 that no store not so already located shall be located within
6 three hundred feet of any elementary or secondary school, nor
7 within a dry municipality without there first having been a
8 referendum approving such location. When the board shall have
9 determined upon the location of a liquor store in any
10 municipality, it shall give notice of such location by public
11 advertisement in two newspapers of general circulation. In
12 cities of the first class, the location shall also be posted for
13 a period of at least fifteen days following its determination by
14 the board as required in section 403(g) of this act. The notice
15 shall be posted in a conspicuous place on the outside of the
16 premises in which the proposed store is to operate or, in the
17 event that a new structure is to be built in a similarly visible
18 location. If, within five days after the appearance of such
19 advertisement, or of the last day upon which the notice was
20 posted, fifteen or more taxpayers residing within a quarter of a
21 mile of such location, or the City Solicitor of the city of the
22 first class, shall file a protest with the court of common pleas
23 of the county averring that the location is objectionable
24 because of its proximity to a church, a school, or to private
25 residences, the court shall forthwith hold a hearing affording
26 an opportunity to the protestants and to the board to present
27 evidence. The court shall render its decision immediately upon
28 the conclusion of the testimony and from the decision there
29 shall be no appeal. If the court shall determine that the
30 proposed location is undesirable for the reasons set forth in
31 the protest, the board shall abandon it and find another
32 location. The board may establish, operate and maintain such
33 establishments for storing and testing liquors as it shall deem
34 expedient to carry out its powers and duties under this act.

35 (b) The board may lease the necessary premises for such
36 stores or establishments[, but all such leases shall be made
37 through the Department of General Services as agent of the
38 board. The board, through the Department of General Services,]
39 and shall have authority to purchase such equipment and
40 appointments as may be required in the operation of such stores
41 or establishments.

42 Section 3. Section 304(b) of the act, amended December 8,
43 2004 (P.L.1810, No.239), is amended to read:

44 Section 304. When Sales May Be Made at Pennsylvania Liquor
45 Stores.--* * *

46 (b) Certain Pennsylvania Liquor Stores operated by the board
47 shall be open for Sunday retail sales between the hours of
48 [noon] nine o'clock antemeridian and [five] nine o'clock
49 postmeridian, except that no Sunday sales shall occur on Easter
50 Sunday or Christmas day. The board shall open [up to twenty-five
51 per centum of the total number of Pennsylvania Liquor Stores at

1 its discretion] as many Pennsylvania Liquor Stores as it deems
2 necessary for Sunday sales as provided for in this subsection.
3 The board shall submit yearly reports to the Appropriations and
4 the Law and Justice Committees of the Senate and the
5 Appropriations and the Liquor Control Committees of the House of
6 Representatives summarizing the total dollar value of sales
7 under this section.

8 Section 4. Section 305(a) of the act, amended May 8, 2003
9 (P.L.1, No.1), is amended to read:

10 Section 305. Sales by Pennsylvania Liquor Stores.--(a) The
11 board shall in its discretion determine where and what classes,
12 varieties and brands of liquor and alcohol it shall make
13 available to the public and where such liquor and alcohol will
14 be sold. Every Pennsylvania Liquor Store shall be authorized to
15 sell combination packages. If a person desires to purchase a
16 class, variety or brand of liquor or alcohol not currently
17 available from the board, he or she may place a special order
18 for such item so long as the order is for two or more bottles.
19 The board may require a reasonable deposit from the purchaser as
20 a condition for accepting the order. The customer shall be
21 notified immediately upon the arrival of the goods.

22 In computing the retail price of such special orders for
23 liquor or alcohol, the board shall not include the cost of
24 freight or shipping before applying [the] a mark-up that shall
25 not exceed ten per centum of the cost of the product and taxes
26 but shall add the freight or shipping charges to the price after
27 the mark-up and taxes have been applied.

28 Unless the customer pays for and accepts delivery of any such
29 special order within ten days after notice of arrival, the store
30 may place it in stock for general sale and the customer's
31 deposit shall be forfeited.

32 * * *

33 Section 5. Section 488 of the act, added February 21, 2002
34 (P.L.103, No.10), is amended to read:

35 Section 488. Shipment of Wine [into Commonwealth].--(a) The
36 shipment of wine [from out-of-State] to residents of this
37 Commonwealth [is prohibited, except as otherwise provided for
38 in] shall be governed by this section.

39 (b) Notwithstanding any other provision of this act or law
40 to the contrary, a person licensed by the board or another state
41 as a producer[, supplier, importer, wholesaler, distributor or
42 retailer] of wine and who obtains a direct wine shipper license
43 as provided for in this section may ship [up to nine liters per
44 month of] any wine [not included on the list provided for in
45 subsection (c)] on the [Internet] order of any resident of this
46 Commonwealth who is at least twenty-one (21) years of age for
47 such resident's personal use and not for resale.

48 (c) [Each month, the board shall publish on the Internet a
49 list of all classes, varieties and brands of wine available for
50 sale in the Pennsylvania Liquor Stores. A person holding a
51 direct shipper license may ship only those classes, varieties

1 and brands of wine not included on the list at the time an
2 Internet order is placed.] Prior to issuing a direct wine
3 shipper license, the board shall require the person seeking the
4 license to:

5 (1) File an application with the board.

6 (2) Pay a one hundred dollar (\$100) registration fee.

7 (3) Provide to the board a true copy of the applicant's
8 current alcoholic beverage license issued by the board or
9 another state, if applicable.

10 (4) Provide documentation to the board which evidences that
11 the applicant has obtained a sales tax license from the
12 Department of Revenue.

13 (5) Provide the board with any other information that the
14 board deems necessary and appropriate.

15 (d) [An out-of-State] A direct wine shipper shall:

16 (1) [Not ship more than nine liters per month on the
17 Internet order of any person in this Commonwealth.] On a
18 quarterly basis, pay to the Department of Revenue all taxes due
19 on sales to residents of this Commonwealth. Notwithstanding any
20 other provision of law to the contrary, the wine delivered under
21 the authority of this section will be subject to the sales and
22 use tax imposed by section 202 of the act of March 4, 1971
23 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the sales
24 and use tax imposed by Article XXXI-B of the act of July 28,
25 1953 (P.L.723, No.230), known as the "Second Class County Code,"
26 the sales and use tax imposed by the act of June 5, 1991 (P.L.9,
27 No.6), known as the "Pennsylvania Intergovernmental Cooperation
28 Authority Act for Cities of the First Class," and the emergency
29 State tax imposed on wines sold by the board under the act of
30 June 9, 1936 (1st Sp. Sess., P.L.13, No.4), entitled "An act
31 imposing an emergency State tax on liquor, as herein defined,
32 sold by the Pennsylvania Liquor Control Board; providing for the
33 collection and payment of such tax; and imposing duties upon the
34 Department of Revenue and the Pennsylvania Liquor Control
35 Board."

36 (2) Report to the board each year the total of wine shipped
37 [into] to residents of this Commonwealth in the preceding
38 calendar year.

39 (3) Permit the board, the enforcement bureau or the
40 Secretary of Revenue, or their designated representatives, to
41 perform an audit of the [out-of-State] direct wine shipper's
42 records upon request.

43 (4) Be deemed to have submitted to the jurisdiction of the
44 board, any other State agency and the courts of this
45 Commonwealth for purposes of enforcement of this section and any
46 related laws, rules or regulations, including the collection and
47 remission of taxes as required under this section.

48 (5) Require proof of age of the recipient, in a manner or
49 format approved by the board, before any wine is shipped to a
50 resident of this Commonwealth.

51 (6) Ensure that all boxes or exterior containers of wine

1 shipped directly to a resident of this Commonwealth are
2 conspicuously labeled with the words "CONTAINS ALCOHOL:
3 SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR
4 DELIVERY."

5 (7) Annually renew its license by paying a renewal fee
6 established by the board.

7 (e) A direct shipper may ship wine on the [Internet] order
8 of a resident into this Commonwealth provided that the wine [is
9 shipped to a Pennsylvania Liquor Store selected by the resident.
10 The wine will be subject to taxes in the same manner as wine
11 sold directly by the board. The wine will not be released by the
12 State store until all moneys due, including all taxes and fees,
13 have been paid by the resident.] delivered under the authority
14 of this section will be subject to the sales and use tax imposed
15 by section 202 of the "Tax Reform Code of 1971," the sales and
16 use tax imposed by Article XXXI-B of the "Second Class County
17 Code," the sales and use tax imposed by the "Pennsylvania
18 Intergovernmental Cooperation Authority Act for Cities of the
19 First Class," and the emergency State tax imposed on wines sold
20 by the board under the act of June 9, 1936 (1st Sp. Sess.,
21 P.L.13, No.4).

22 (e.1) A transporter for hire shall:

23 (1) keep records as required under section 512 pertaining to
24 the direct shipment of wine; and

25 (2) permit the board and the enforcement bureau, or their
26 designated representatives, to inspect such records in
27 accordance with section 513.

28 (f) [A person shall sign an affidavit provided by the
29 Pennsylvania Liquor Store where the wine was delivered to
30 stating that the wine will only be used for the person's
31 personal use.] Any person who resells wine obtained under this
32 section commits a misdemeanor of the second degree.

33 (g) The board may promulgate such rules and regulations as
34 are necessary to implement and enforce the provisions of this
35 section. [The board may charge the resident a fee to cover the
36 cost associated with processing the Internet order.]

37 (h) The board shall submit [monthly] annual reports to the
38 Appropriations Committee and the Law and Justice Committee of
39 the Senate and to the Appropriations Committee and the Liquor
40 Control Committee of the House of Representatives summarizing
41 the number of direct shipper licenses issued by the board[,] and
42 the quantity of wine sold by direct wine shippers pursuant to
43 this section [and the total dollar value of sales under this
44 section].

45 (i) The term "wine" as used in this section shall mean
46 liquor which is fermented from grapes and other fruits, having
47 alcoholic content of twenty-four per centum or less. The term
48 "wine" shall not include malt or brewed beverages nor shall wine
49 include any products containing alcohol derived from malt,
50 grain, cereal, molasses or cactus.

51 (j) The term "direct wine shipper" as used in this section

1 shall mean a person who holds a direct wine shipper license as
2 provided for in this section and includes a limited winery.

3 Section 6. Section 505.2(a) of the act is amended by adding
4 a clause to read:

5 Section 505.2. Limited Wineries.--(a) In the interest of
6 promoting tourism and recreational development in Pennsylvania,
7 holders of a limited winery license may:

8 * * *

9 (2.1) Notwithstanding any other provision of this act or law
10 to the contrary, only ship wine to residents of this
11 Commonwealth in accordance with the provisions of section 488.

12 * * *

13 Section 7. This act shall take effect in 60 days.