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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2350 Session of 2010

INTRODUCED BY TURZAI, SAYLOR, CHRISTIANA, BEAR, BENNINGHOFF, COX, GILLESPIE, GINGRICH, HARRIS, HUTCHINSON, KILLION, KRIEGER, METCALFE, MILLER, MOUL, PERRY, QUIGLEY, RAPP, REESE, REICHLEY, ROAE, ROSS, SCHRODER AND TALLMAN, SEPTEMBER 10, 2010

REFERRED TO COMMITTEE ON LIQUOR CONTROL, SEPTEMBER 10, 2010

AN ACT

Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as reenacted, "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," further providing for enforcement; providing for the abolishment of the State liquor stores and for a franchise and license for wine and spirits stores and wholesale operations; further providing for taxation on wine and spirits products; and making certain repeals affecting taxation on wine and spirits.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and amended June 29,

1987 (P.L.32, No.14), is amended by adding definitions to read:

Section 102. Definitions.--The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

* * *

"Municipal police department" shall mean a police department of a county, city, borough, town or township.

* * *

"Wine and spirits store franchise" shall mean a written agreement between the board and a successful bidder in which the board agrees to issue a wine and spirits store license to the successful bidder for a specified geographic area for the establishment and operation of a wine and spirits store consistent with the provisions of this act.

"Wine and spirits store licensee" shall mean any person who successfully bids for a franchise and who applies for and receives a license for the operation of a wine and spirits store for the retail sale of wine and liquor for off-premises consumption.

"Wine and spirits wholesale franchise" shall mean a written agreement between the board and a successful bidder in which the board agrees to issue a wine and spirits wholesale license to the successful bidder for a specified geographic area for the establishment and operation of a wine and spirits wholesale and warehousing business consistent with the provisions of this act.

"Wine and spirits wholesale licensee" shall mean any person who successfully bids for a franchise and who applies for and receives a license for the operation of a wine and spirits wholesale and warehousing business for the sale of wine and spirits to retail licensees that are authorized to sell wine and

spirits for on-premises and off-premises consumption under the provisions of this act.

* * *

Section 2. Section 104(c) and (d) of the act, amended December 7, 1990 (P.L.662, No.160) and December 20, 1996 (P.L.1513, No.196), are amended to read:

Section 104. Interpretation of Act.--* * *

(c) Except as otherwise expressly provided, the purpose of this act is to prohibit the manufacture of and transactions in liquor, alcohol and malt or brewed beverages which take place in this Commonwealth, except by and under the control of the board as herein specifically provided, and every section and provision of the act shall be construed accordingly; to provide a structure in this Commonwealth for a distribution system, including the [establishment of Pennsylvania liquor stores and] licensing of wine and spirits wholesalers, wine and spirits stores, importing distributors and distributors; and to preserve manufacturers of liquor and alcohol and malt and brewed beverages selling those products within this Commonwealth. The provisions of this act dealing with the manufacture, importation, sale, distribution and disposition of liquor, alcohol and malt or brewed beverages within the Commonwealth through [the instrumentality of the board,] licensees and otherwise, provide the means by which such control shall be made effective. This act shall not be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of this Commonwealth.

(d) The provisions of this act are intended to create a system for distribution [that shall include the fixing of prices for] of liquor and alcohol and controls placed on prices for

malt and brewed beverages, and each of which shall be construed as integral to the preservation of the system, without which system the Commonwealth's control of the sale of liquor and alcohol and malt and brewed beverages and the Commonwealth's promotion of its policy of temperance and responsible conduct with respect to alcoholic beverages would not be possible.

* * *

Section 3. Section 207(a), (b), (c) and (j) of the act, amended November 30, 2004 (P.L.1727, No.221) and December 8, 2004 (P.L.1810, No.239), are amended to read:

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

[(a) To buy, import or have in its possession for sale and sell liquor, alcohol, corkscrews, wine and liquor accessories, trade publications, gift cards, gift certificates, wine- or liquor-scented candles and wine glasses in the manner set forth in this act: Provided, however, That all purchases shall be made subject to the approval of the State Treasurer, or his designated deputy. The board shall buy liquor and alcohol at the lowest price and in the greatest variety reasonably obtainable.]

(b) To control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor, alcohol and malt or brewed beverages in accordance with the provisions of this act[, and to fix the wholesale and retail prices at which liquors and alcohol shall be sold at Pennsylvania Liquor Stores. Prices shall be proportional with prices paid by the board to its suppliers and shall reflect any advantage obtained through volume purchases by the board. The board may establish a preferential price structure for wines produced within this Commonwealth for the

promotion of such wines, as long as the price structure is uniform within each class of wine purchased by the board. The board shall require each Pennsylvania manufacturer and each nonresident manufacturer of liquors, other than wine, selling such liquors to the board, which are not manufactured in this Commonwealth, to make application for and be granted a permit by the board before such liquors not manufactured in this Commonwealth shall be purchased from such manufacturer. Each such manufacturer shall pay for such permit a fee which, in the case of a manufacturer of this Commonwealth, shall be equal to that required to be paid, if any, by a manufacturer or wholesaler of the state, territory or country of origin of the liquors, for selling liquors manufactured in Pennsylvania, and in the case of a nonresident manufacturer, shall be equal to that required to be paid, if any, in such state, territory or country by Pennsylvania manufacturers doing business in such state, territory or country. In the event that any such manufacturer shall, in the opinion of the board, sell or attempt to sell liquors to the board through another person for the purpose of evading this provision relating to permits, the board shall require such person, before purchasing liquors from him or it, to take out a permit and pay the same fee as hereinbefore required to be paid by such manufacturer. All permit fees so collected shall be paid into the State Stores Fund. The board shall not purchase any alcohol or liquor fermented, distilled, rectified, compounded or bottled in any state, territory or country, the laws of which result in prohibiting the importation therein of alcohol or liquor, fermented, distilled, rectified, compounded or bottled in Pennsylvania.

(c) To determine the municipalities within which

Pennsylvania Liquor Stores shall be established and the locations of the stores within such municipalities].

* * *

[(j) By regulation, to provide for the use of a computerized referral system to assist consumers in locating special items at Pennsylvania Liquor Stores and for the use of electronic transfer of funds and credit cards for the purchase of liquor and alcohol at Pennsylvania Liquor Stores.]

* * *

Section 4. Section 208 of the act is amended to read:

Section 208. Specific Subjects on Which Board May Adopt Regulations.--Subject to the provisions of this act and without limiting the general power conferred by the preceding section, the board may make regulations regarding:

[(a) The equipment and management of Pennsylvania Liquor Stores and warehouses in which liquor and alcohol are kept or sold, and the books and records to be kept therein.]

(b) The duties and conduct of the officers and employes of the board.

[(c) The purchase, as provided in this act, of liquor and alcohol, and its supply to Pennsylvania Liquor Stores.

(d) The classes, varieties and brands of liquor and alcohol to be kept and sold in Pennsylvania Liquor Stores. In making this determination the board shall meet not less than twice a year.

(e) The issuing and distribution of price lists for the various classes, varieties or brands of liquor and alcohol kept for sale by the board under this act.]

(f) The labeling of liquor and alcohol sold under this act and of liquor and alcohol lawfully acquired by any person prior

to January first, one thousand nine hundred thirty-four.

(g) Forms to be used for the purposes of this act.

(h) The issuance of licenses and permits and the conduct, management, sanitation and equipment of places licensed or included in permits.

[(i) The place and manner of depositing the receipts of Pennsylvania Liquor Stores and the transmission of balances to the Treasury Department through the Department of Revenue.

(j) The solicitation by resident or nonresident vendors of liquor from Pennsylvania licensees and other persons of orders for liquor to be sold through the Pennsylvania Liquor Stores and, in the case of nonresident vendors, the collection therefrom of license fees for such privilege at the same rate as provided herein for importers' licenses.]

Section 4.1. Section 211(a) of the act, amended October 5, 1994 (P.L.537, No.80), is amended to read:

Section 211. Enforcement.--(a) There is created within the Pennsylvania State Police a Bureau of Liquor Control Enforcement [which]<u>. The enforcement bureau and municipal police departments</u> shall be responsible for enforcing this act and any regulations promulgated pursuant thereto. Officers and investigators assigned to the bureau <u>or a municipal police department</u> shall have the power and their duty shall be:

(1) To investigate whenever there are reasonable grounds to believe liquor, alcohol or malt or brewed beverages are being sold on premises not licensed under the provisions of this act. If the investigation produces evidence of the unlawful sale of liquor or malt or brewed beverages or any other violation of the provisions of this act, the officer involved in the investigation shall institute criminal proceedings against the

person or persons believed to have been criminally liable, as otherwise provided by law or rule of court.

(2) To arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale, importation, manufacture or transportation or having unlawful possession of liquor, alcohol or malt or brewed beverages contrary to the provisions of this act or any other law of this Commonwealth or any person whom the officer/investigator, while in the performance of his assigned duties under and pursuant to this act and any regulations promulgated under this act, observes to be in violation of any of the following provisions:

18 Pa.C.S. § 3302 (relating to causing or risking catastrophe).

18 Pa.C.S. § 3304 (relating to criminal mischief).

18 Pa.C.S. § 4101 (relating to forgery).

18 Pa.C.S. § 5503 (relating to disorderly conduct).

18 Pa.C.S. § 5505 (relating to public drunkenness).

18 Pa.C.S. § 5512 (relating to lotteries, etc.).

18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).

18 Pa.C.S. § 5514 (relating to pool selling and bookmaking).

18 Pa.C.S. § 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages).

18 Pa.C.S. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).

18 Pa.C.S. § 6309 (relating to representing that minor is of age).

18 Pa.C.S. § 6310.1 (relating to selling or furnishing

liquor or malt or brewed beverages to minors).

18 Pa.C.S. § 6310.3 (relating to carrying a false identification card).

(3) Upon reasonable and probable cause, to search for and to seize, without warrant or process, except in private homes, any liquor, alcohol or malt or brewed beverages unlawfully possessed, manufactured, sold, imported or transported and any stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them, which are or have been used in the unlawful manufacture, sale, importation or transportation of the same. Such liquor, alcohol, malt or brewed beverages, stills, equipment, materials, utensils, vehicles, boats, vessels, animals or aircraft so seized shall be disposed of as hereinafter provided.

(4) To investigate and issue citations for any violations of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or any regulations of the board adopted pursuant to such laws or any violation of any laws of this Commonwealth or of the Federal Government, relating to the payment of taxes on liquor, alcohol or malt or brewed beverages by any licensee, his officers, servants, agents or employes.

(5) To arrest any person who engages in the following offenses when the said offenses are committed against the officer/investigator or any person accompanying and assisting the officer/investigator while the said officer/investigator is performing assigned duties under and pursuant to this act and any regulations promulgated under this act:

18 Pa.C.S. § 2701 (relating to simple assault).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 2705 (relating to recklessly endangering another person).

18 Pa.C.S. § 2706 (relating to terroristic threats).

18 Pa.C.S. § 2709 (relating to harassment and stalking).

18 Pa.C.S. § 5104 (relating to resisting arrest or other law enforcement).

18 Pa.C.S. § 5501 (relating to riot).

(6) To serve and execute warrants issued by the proper authorities for offenses referred to in this subsection and to serve subpoenas.

(7) To arrange for the administration of chemical tests of breath, blood or urine, including preliminary breath tests, to persons for the purpose of determining the alcoholic content of blood or the presence of a controlled substance by qualified personnel of a State or local police department or qualified personnel of a clinical laboratory licensed and approved by the Department of Health.

* * *

Section 5. Section 213 of the act, amended April 29, 1994 (P.L.212, No.30), is repealed:

[Section 213. Bureau of Consumer Relations.--The board shall establish a Bureau of Consumer Relations which shall be responsible for handling all consumer complaints and suggestions. The bureau shall develop a system-wide program for investigating all complaints and suggestions and implementing improvements into the State store system. The management of the bureau shall be vested in a director, who shall be assisted by such other personnel as the board deems necessary.]

Section 6. Section 215 of the act, amended June 25, 2010 (P.L.217, No.35), is repealed:

[Section 215. Wine and Spirits Marketing.--(e) The board is authorized to participate in or sponsor wine and spirits events for the purpose of educating consumers as to the wines and spirits available in this Commonwealth. The wine and spirits to be used for the event may be acquired through the State store system or may be donated from outside this Commonwealth. Participation in the tastings may be conditioned on the purchase of a ticket to the event. The event may include events occurring on premises licensed by the board, and the board may sell wine and spirits for off-premises consumption in an area designated by the board for such sale.]

Section 7. Article III of the act, amended July 13, 1987 (P.L.331, No.61), May 8, 2003 (P.L.1, No.1), July 17, 2003 (P.L.63, No.15), November 30, 2004 (P.L.1727, No.221), December 8, 2004 (P.L.1810, No.239) and July 6, 2005 (P.L.135, No.39), is repealed:

[ARTICLE III.

PENNSYLVANIA LIQUOR STORES.

Section 301. Board to Establish State Liquor Stores.--(a) The board shall establish, operate and maintain at such places throughout the Commonwealth as it shall deem essential and advisable, stores to be known as "Pennsylvania Liquor Stores," for the sale of liquor and alcohol in accordance with the provisions of and the regulations made under this act; except that no store not so already located shall be located within three hundred feet of any elementary or secondary school, nor within a dry municipality without there first having been a referendum approving such location. When the board shall have determined upon the location of a liquor store in any municipality, it shall give notice of such location by public

advertisement in two newspapers of general circulation. In cities of the first class, the location shall also be posted for a period of at least fifteen days following its determination by the board as required in section 403(g) of this act. The notice shall be posted in a conspicuous place on the outside of the premises in which the proposed store is to operate or, in the event that a new structure is to be built in a similarly visible location. If, within five days after the appearance of such advertisement, or of the last day upon which the notice was posted, fifteen or more taxpayers residing within a quarter of a mile of such location, or the City Solicitor of the city of the first class, shall file a protest with the court of common pleas of the county averring that the location is objectionable because of its proximity to a church, a school, or to private residences, the court shall forthwith hold a hearing affording an opportunity to the protestants and to the board to present evidence. The court shall render its decision immediately upon the conclusion of the testimony and from the decision there shall be no appeal. If the court shall determine that the proposed location is undesirable for the reasons set forth in the protest, the board shall abandon it and find another location. The board may establish, operate and maintain such establishments for storing and testing liquors as it shall deem expedient to carry out its powers and duties under this act.

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

establishments.

Section 302. Selection of Personnel.--Officers and employes of the board, except as herein otherwise provided, shall be appointed and employed subject to the provisions of the Civil Service Act.

Section 303. Management of Pennsylvania Liquor Stores.--Every Pennsylvania Liquor Store shall be conducted by a person appointed in the manner provided in the Civil Service Act who shall be known as the "manager" and who shall, under the directions of the board, be responsible for carrying out the provisions of this act and the regulations adopted by the board under this act as far as they relate to the conduct of such stores.

Section 304. When Sales May Be Made at Pennsylvania Liquor Stores.--(a) Except as provided for in subsection (b), every Pennsylvania Liquor Store shall be open for business week days, except holidays as that term is defined in section 102. The board may, with the approval of the Governor, temporarily close any store in any municipality.

(b) Certain Pennsylvania Liquor Stores operated by the board shall be open for Sunday retail sales between the hours of noon and five o'clock postmeridian, except that no Sunday sales shall occur on Easter Sunday or Christmas day. The board shall open up to twenty-five per centum of the total number of Pennsylvania Liquor Stores at its discretion for Sunday sales as provided for in this subsection. The board shall submit yearly reports to the Appropriations and the Law and Justice Committees of the Senate and the Appropriations and the Liquor Control Committees of the House of Representatives summarizing the total dollar value of sales under this section.

Section 305.1. Confectionery Containing Alcohol or Liquor.--(a) Notwithstanding the prohibition against the manufacture of confectionery containing alcohol as set forth in the fifth clause of subsection (a) of section 3 of the act of May 13, 1909 (P.L.520, No.292), referred to as the Pure Food Law, the manufacture, storage, transportation and delivery to points out-of-State by manufacturers of confectionery containing alcohol or liquor is permitted.

(b) The sale of confectionery containing alcohol or liquor is prohibited within this Commonwealth.

(c) This section is not intended to cover, govern, nor control the sale of confectionery containing tinctures or extracts used for flavoring purposes or solvents for glazes.

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

In computing the retail price of such special orders for liquor or alcohol, the board shall not include the cost of freight or shipping before applying the mark-up and taxes but shall add the freight or shipping charges to the price after the mark-up and taxes have been applied.

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

(b) Every Pennsylvania Liquor Store shall sell liquors at wholesale to hotels, restaurants, clubs, and railroad, pullman and steamship companies licensed under this act; and, under the regulations of the board, to pharmacists duly licensed and registered under the laws of the Commonwealth, and to manufacturing pharmacists, and to reputable hospitals approved by the board, or chemists. Sales to licensees shall be made at a price that includes a discount of ten per centum from the retail price. The board may sell to registered pharmacists only such liquors as conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia. The board may sell at special prices under the regulations of the board, to United States Armed Forces facilities which are located on United States Armed Forces installations and are conducted pursuant to the authority and regulations of the United States Armed Forces. All other sales by such stores shall be at retail. A person entitled to purchase liquor at wholesale prices may purchase the liquor at any Pennsylvania Liquor Store upon tendering cash, check or credit card for the full amount of the purchase. For this purpose, the board shall issue a discount card to each licensee identifying such licensee as a person authorized to purchase liquor at wholesale prices. Such discount card shall be retained by the licensee. The board may contract through the Commonwealth bidding process for delivery to wholesale licensees at the expense of the licensee receiving the delivery.

(c) Whenever any checks issued in payment of liquor or alcohol purchased from State Liquor Stores by persons holding wholesale purchase permit cards issued by the board shall be returned to the board as dishonored, the board shall charge a fee of five dollars per hundred dollars or fractional part thereof, plus all protest fees, to the maker of such check submitted to the board. Failure to pay the face amount of the check in full and all charges thereon as herein required within ten days after demand has been made by the board upon the maker of the check shall be cause for revocation or suspension of any license issued by the board to the person who issued such check and the cancellation of the wholesale purchase permit card held by such person.

(d) No liquor or alcohol package shall be opened on the premises of a Pennsylvania Liquor Store. No manager or other employe of the board employed in a Pennsylvania Liquor Store shall allow any liquor or alcohol to be consumed on the store premises, nor shall any person consume any liquor or alcohol on such premises, except liquor and alcohol which is part of a tasting conducted pursuant to the board's regulations. Such tastings may also be conducted in the board's headquarters or regional offices.

(e) The board may sell tax exempt alcohol to the Commonwealth of Pennsylvania and to persons to whom the board shall, by regulation to be promulgated by it, issue special permits for the purchase of such tax exempt alcohol.

Such permits may be issued to the United States or any governmental agency thereof, to any university or college of learning, any laboratory for use exclusively in scientific research, any hospital, sanitorium, eleemosynary institution or

dispensary; to physicians, dentists, veterinarians and pharmacists duly licensed and registered under the laws of the Commonwealth of Pennsylvania; to manufacturing chemists and pharmacists or other persons for use in the manufacture or compounding of preparations unfit for beverage purposes.

(f) Every purchaser of liquor, alcohol, corkscrews, wine or liquor accessories, trade publications, gift cards, gift certificates, wine- or liquor-scented candles or wine glasses from a Pennsylvania Liquor Store shall receive a numbered receipt which shall show the price paid therefor and such other information as the board may prescribe. Copies of all receipts issued by a Pennsylvania Liquor Store shall be retained by and shall form part of the records of such store.

(g) The board is hereby authorized and empowered to adopt and enforce appropriate rules and regulations to insure the equitable wholesale and retail sale and distribution, through the Pennsylvania Liquor Stores, of available liquor and alcohol at any time when the demand therefor is greater than the supply.

(h) Every Pennsylvania Liquor Store shall sell gift certificates and gift cards which may be redeemed for any product sold by the board. In addition, the board may sell corkscrews, wine and liquor accessories, wine- or liquor-scented candles, trade publications and wine sleeves at Pennsylvania Liquor Stores.

(i) Notwithstanding any other provision of law to the contrary, the board may sell wine in containers having a capacity of six liters or less.

Section 306. Audits by Auditor General.--(a) It shall be the duty of the Department of the Auditor General to make all audits which may be necessary in connection with the

administration of the financial affairs of the board and the Pennsylvania Liquor Stores operated and maintained by the board. Such audits shall be conducted in accordance with generally accepted accounting principles. Nothing herein shall be construed to require the Auditor General to conduct biannual inventories.

(b) At least one audit shall be made each year of the affairs of the board, and all collections made by the Pennsylvania Liquor Stores shall be audited quarterly. A copy of the annual audit of the affairs of the board shall be submitted to each member of the General Assembly.

(c) Special audits of the affairs of the board and the Pennsylvania Liquor Stores maintained and operated by the board may be made whenever they may, in the judgment of the Auditor General, appear necessary, and shall be made whenever the Governor shall call upon the Auditor General to make them.

(d) Copies of all audits made by the Department of the Auditor General shall be promptly submitted to the board and to the Governor.

(e) Unless the Department of the Auditor General shall neglect or refuse to make annual, quarterly or special Audits, as hereinabove required, it shall be unlawful for the board to expend any money appropriated to it by the General Assembly for any audit of its affairs, except for the payment of the compensation and expenses of such auditors as are regularly employed as part of the administrative staff of the board.]

Section 8. The act is amended by adding an article to read:

ARTICLE III-A

WINE AND SPIRITS DISTRIBUTION

SUBARTICLE A

WINE AND SPIRITS

FRANCHISES AND LICENSES

Section 301-A. Legislative intent.

(a) Declaration.--The General Assembly hereby finds and declares that:

(1) The sale of liquor and wine at wholesale or retail should no longer be by the Commonwealth, but rather by licensees.

(2) The health and welfare of the citizens of this Commonwealth will be adequately protected by the regulation of private licensees through strict enforcement of laws and rules relating to the purchase and sale of liquor and wine.

(3) The sale of liquor and wine through wholesale and retail licenses will improve customer service, selection and price.

(4) The operation and efficiency of State Government will be improved.

(b) Purpose.--It is the purpose of the General Assembly to:

(1) Continue and increase revenue to the Commonwealth.

(2) Provide a system of controls, including limitations on the number of wholesale and retail franchises and licenses, and establish procedures to discourage the intemperate use of liquor.

(3) Create incentives and facilitate the transition of employees to other employment.

(4) Minimize disruption of services to the public.

(5) Enhance alcohol education efforts to ensure against the illegal sale of alcohol and consumption of alcohol by minors and visibly intoxicated persons.

Section 302-A. Transition to franchise and licensure of stores

and warehouses.

(a) General.--The board shall develop and implement a plan to provide for the orderly transition from the current system of wholesale and retail distribution of alcohol through the board to a franchise and license system of alcohol distribution in this Commonwealth. The board shall transition its retail operations first, followed by its wholesale operations.

(b) Transition.--The board shall transition to wine and spirits store franchises and licenses pursuant to the provisions of this article. The board shall substantially divest itself of all operations relating to the retail sale of alcohol in this Commonwealth within one year of the effective date of this section.

(c) Divestiture.--Eighteen months after the effective date of this section, the board shall substantially divest itself of all operations relating to the wholesale distribution of alcohol in this Commonwealth in accordance with the provisions of this article.

(d) Prohibition.--Under no circumstances will the board engage in any wholesale or retail distribution of liquor within this Commonwealth after two years of the effective date of this section.

Section 303-A. Reports to General Assembly; review.

(a) Annual report.--One year after the effective date of this section, and each year thereafter, the board shall submit to the General Assembly an annual report on wholesale and retail alcohol sales in this Commonwealth and the implementation of this article, including, but not limited to, the total revenue earned by the issuance of licenses pursuant to this article for the wholesale and retail sale of liquor in this Commonwealth.

(b) Review.--Five years following the effective date of this section, the board shall conduct a thorough review of the operations of the wine and spirits wholesale licensees and store licensees. The board shall submit a copy of this review and any recommendations relating to the expansion of existing franchise zones to the General Assembly. The same review shall be conducted ten years following the sale of the first wine and spirits wholesale or store franchise.

Section 304-A. Closure of State stores and initial franchises.

(a) Continuous level of service.--It shall be the power and duty of the board to carry out an orderly transition to a wine and spirits store system in a manner which is consistent with this article and other laws of this Commonwealth and which maintains a continuous level of service to the public.

(b) Franchise zones.--

(1) Subject to the provisions of this article, the board shall establish 621 franchise zones within this Commonwealth for the issuance of wine and spirit store licenses, granting to a licensee the exclusive authority to sell liquor and wine at retail for off-premises consumption within each franchise zone. The board, in establishing each franchise zone, shall ensure the delivery of services currently provided by State stores. At a minimum there shall be a wine and spirits store located in each county.

(2) In addition to the franchise zones established under paragraph (1), the board shall permit an additional 129 franchises within this Commonwealth for the issuance of wine and spirit store licenses, granting to a licensee the authority to sell liquor and wine at retail for off-premises consumption within this Commonwealth in a location to be

determined by application to the board. The board, in establishing the location for such a franchise, shall ensure that existing franchise zones established under paragraph (1) are not negatively impacted and the delivery of services currently provided are maintained or enhanced.

(c) Sale schedule.--

(1) The board shall establish a schedule for the sale of wine and spirits store franchises within the franchise zones established pursuant to subsection (b)(1) by sale to the highest responsible bidder in accordance with this article. The board may establish a staggered schedule for the sale of wine and spirits store franchises in order to maintain a continuous level of service to the public. Upon substantial completion of the sale of wine and spirits store franchises under subsection (b)(1), the board may engage in a similar process in auctioning franchises under subsection (b)(2).

(2) The minimum bid for a franchise shall be determined based on the fair and reasonable market value of each franchise as determined by the board.

(3) The franchise shall be valid for a period of two years from the date of issuance unless sooner forfeited, abandoned or revoked pursuant to the provisions of this act.

(4) No applicant may hold, directly or indirectly:

(i) More than 5% of the franchises within this Commonwealth.

(ii) More than 10% of the franchises in any one county which has ten or more franchises.

(iii) More than one franchise in any one county which has fewer than ten franchises.

(d) Powers and duties.--In implementing the provisions of

this article, the board shall have the following additional powers and duties:

(1) To prescribe application forms for persons desiring to acquire a wine and spirits store license.

(2) To adopt an orderly procedure for the investigation, processing and approval of applications for franchises and wine and spirits store licenses.

(3) To develop the form of the wine and spirits store license.

(4) To disseminate information to the public relating to the sale of franchises and the issuance of wine and spirits store licenses.

(5) To make available for public inspection the most recent inventory of the stock, equipment and other assets of each State store as well as a history of sales by product code and State store location for the last five years.

(6) To enforce the provisions of this article, including the imposition of civil penalties when appropriate.

Section 305-A. Discontinuance of wholesale operations by board and initial franchises.

(a) Orderly transition.--It shall be the power and duty of the board to carry out an orderly transition to a privately owned and operated wholesale wine and spirits distribution system in a manner which is consistent with this article and other laws of this Commonwealth and which maintains a continuous level of service to the public.

(b) Franchise established.--Subject to the provisions of this article, the board shall establish 100 franchises within this Commonwealth for the issuance of wine and spirits store licenses granting to a licensee the authority to deliver liquor

and wine at wholesale to retail licensees and wine and spirits store licensees within each franchise zone. The board, in establishing each franchise zone, shall ensure the delivery of services currently provided by the State-operated wholesale delivery system. The number of wholesale franchises and licenses available in each county shall be no more than the following:

(1) Counties of the first class: five.

(2) Counties of the second class: five.

(3) Counties of the second class-A: four.

(4) Counties of the third class: three.

(5) Counties of the fourth through eighth class: two.

(c) Schedule.--

(1) The board shall establish a schedule for the sale of wine and spirits wholesale franchises within each county established pursuant to subsection (b) by sale to the highest responsible bidder in accordance with this article. Such schedule shall ensure the full divestiture of the Commonwealth's wine and spirits wholesale operations to licensees within six months of offering the first franchise at auction to qualified applicants.

(2) The minimum bid for a franchise shall be determined based on the fair and reasonable market value of each franchise as determined by the board.

(3) The franchise shall be valid for a period of two years from the date of issuance unless sooner forfeited, abandoned or revoked pursuant to the provisions of this act.

(4) No applicant may hold, directly or indirectly:

(i) more than 5% of the franchises within this Commonwealth; or

(ii) more than one of the franchises in any county.

(d) Additional powers and duties.--In implementing the provisions of this article, the board shall have the following additional powers and duties:

(1) To prescribe application forms for persons desiring to acquire a wine and spirits wholesale license.

(2) To adopt an orderly procedure for the investigation, processing and approval of applications for franchises and wine and spirits wholesale licenses.

(3) To develop the form of the wine and spirits wholesale license.

(4) To disseminate information to the public relating to the sale of franchises and the issuance of wine and spirits wholesale licenses.

(5) To enforce the provisions of this article, including the imposition of civil penalties when appropriate.

Section 306-A. Application for franchises and licenses.

(a) Qualifications.--No person may bid upon, purchase or otherwise acquire a wine and spirits store or wholesale franchise unless the applicant has satisfied all the prescribed requirements of this article and the board has approved the applicant's qualification to hold a wine and spirits store franchise and license pursuant to this article.

(b) Requirements.--Prior to the submission of a bid for a wine and spirits store or wholesale franchise, each applicant shall file a written application, with the application fee required under subsection (g), in such form and containing such information as the board shall from time to time prescribe. The application shall contain, at a minimum, the following:

(1) The name and address of the applicant.

(2) Whether the applicant is an individual, corporation,

limited liability company, limited partnership, partnership or association; the state of incorporation or organization, the names and residence addresses of each executive officer, director or general or limited partner; and the names and residence addresses of any person or interested individual owning, directly or indirectly, any legal or equitable interest in the operations of the licensed wine and spirits store or wholesale operation proposed to be operated by the applicants, including all stockholders of any closed corporation and all stockholders having an ownership interest of 5% or more of the voting stock of a public corporation. As provided in section 404, parties not listed on the application, or any amendment thereof, can have no ownership interest in a licensed business.

(3) If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association.

(4) If the applicant is a corporation, the application must show that:

(i) The corporation was incorporated under the laws of Pennsylvania or holds a certificate of authority to transact business in Pennsylvania.

(ii) All officers, directors and stockholders with an interest of 5% or more in the stock of the corporation are citizens of the United States.

(5) If the applicant is a natural person, the application must show that the applicant is a citizen of the United States and has been a resident of this Commonwealth for at least one year immediately preceding the application and that the applicant is not acting as an agent for any

other person, partnership, association or group of persons beneficially interested in the license.

(6) The proposed location and ownership of the site for the wine and spirits store or wholesale operation, if available.

(7) A sworn statement that the applicant and all parties with any direct or indirect interests in the operation of a wine and spirits store or wholesale operation have never been convicted in this Commonwealth of any crime involving fraud, moral turpitude or racketeering within a period of ten years immediately preceding the date of the application or have been convicted of any felony or of an equivalent crime in another state or of any crime in this or any other Federal or state court for a violation of any Federal or state liquor law. If the applicant is a corporation, limited partnership, partnership or association, the application shall contain a sworn statement that none of the executive officers, directors or general or limited partners, or any person owning, directly or indirectly, at least 5% of the outstanding stock of or partnership interests in such applicant has been so convicted.

(8) A statement that the applicant will continuously operate a wine and spirits store or wholesale operation for the duration of the two-year franchise period and will provide a level of service, including, but not limited to, hours of operation and product availability reasonably equivalent to the level of service currently provided in the same geographic area.

(c) Financial statement.--In addition to the application filed under subsection (a), the applicant shall provide a

financial statement in the form and containing such information as the board shall from time to time prescribe to indicate the applicant's financial capability to operate the wine and spirits store or wholesale operation and the estimated volume of business to be conducted.

(d) Application requirements.--The application shall be signed and verified by oath or affirmation by the owner, if a natural person or, in the case of an association, by a member or partner thereof or, in the case of a corporation, by an executive officer thereof or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of that authority.

(e) Additional information.--An applicant shall provide the board any additional information the board may request.

(f) Amended application.--When a change occurs in any information provided to the board, an amended application shall immediately be submitted to the board in the same manner as the original application.

(g) Application fees.--

(1) The following fees shall be due upon application for and renewal of a wine and spirits store franchise or a wine and spirits wholesale franchise:

(i) Application filing fee.....$10,000.

(ii) Renewal filing fee..... $1,000.

(2) A fee of $500 shall be due upon application for a wine and spirits store license or a wine and spirits wholesale license.

Section 307-A. Issuance of licenses.

(a) Qualified applicants.--Only those applicants for wine and spirits store or wholesale operation licenses issued

pursuant to this section who meet all of the requirements of this subsection shall be qualified to participate in any sale conducted under this article. The qualifications are as follows:

(1) Applicants shall demonstrate, by submitting financial statements, that the applicants possess sufficient financial resources to operate a licensed wine and spirits store or wholesale operation, pay all taxes due and owing to the Commonwealth and assume liability for the safe operation of the licensed premises.

(2) Applicants shall file a certificate obtained from the Department of Revenue indicating whether the applicant has any current tax deficiencies due and owing the Commonwealth. No applicant shall be permitted to participate in the sale of franchises pursuant to this article if that applicant has any outstanding tax assessments or deficiencies except for amounts subject to timely appeal.

(3) All required bonds and letters of credit shall be posted and are subject to forfeiture for violations of this article in the same manner as provided by sections 465 and 466.

(b) Successful bidders.--Licenses shall be issued pursuant to this section to successful bidders upon demonstration that the licensee will comply with all of the following terms and conditions:

(1) Notice shall be given to the board within 15 days of any change in financial interests as provided by subsection (a)(1).

(2) Notice shall be given to the board within 15 days of any criminal indictments or convictions as provided in section 306-A(b)(7) and the ownership interest of any parties

subject to such convictions shall be totally divested by the licensee within 30 days of the date of any conviction, guilty plea or plea of nolo contendere.

(3) Licensees shall continue to maintain the bonding for the operation of the wine and spirits store or wholesale operation required by this article. Wine and spirits store licensees shall acquire wine and liquor exclusively from the wholesale system as provided in this act and keep a detailed log of all wholesale wine and liquor transactions.

(4) Wine and spirits wholesale licensees shall:

(i) Collect and remit to the Department of Revenue the excise tax as provided in section 341-A.

(ii) Acquire wine and liquor exclusively from a licensed manufacturer or importer of wine and spirits as provided in this act and keep a detailed log of all wholesale wine and spirits transactions.

(5) Licensees shall establish adequate security to protect their inventory from unauthorized sale or diversion and prevent its unauthorized distribution.

(6) No licensee shall locate or operate any wine and spirits store in any premises where the retail sale of motor fuel or malt or brewed beverages is conducted.

Section 308-A. Disqualification.

(a) Disqualification.--The board shall disqualify an applicant for a franchise or license under this article if any of the following apply:

(1) The applicant has been convicted of a crime as provided in paragraph (4).

(2) Any executive officer, director or general or limited partner of the applicant, or any person owning,

directly or indirectly, at least 5% of the outstanding stock of or partnership interest in the applicant, has been convicted of a crime as provided in paragraph (4).

(3) The applicant receives funds for the financing of any part of the wine and spirits store or wholesale operation from any individual who has been convicted of a crime as provided in paragraph (4).

(4) In any instance in which an applicant or persons with financial interest in the license are under indictment for a felony or under investigation by a legally constituted grand jury, the board shall withhold approval or disapproval of the license until such time as all legal proceedings related to the felony are resolved.

(5) The applicant provides false or misleading information.

(b) Penalty.--If any false statement is intentionally made in any part of the application, the affiant commits a misdemeanor of the second degree and, upon conviction, shall be subject to the penalties provided by this article. In addition, the applicant shall be denied a franchise and a license or, if already granted, the franchise and license shall be revoked.

Section 309-A. Application procedure.

(a) Investigation.--Upon receipt of an application for a franchise and license under this article, and any other information the board may require, the board shall conduct an investigation of the applicant as deemed necessary or desirable.

(b) Notification.--Upon the completion of an investigation under subsection (a), the board shall inform the applicant in writing whether the application has been approved or denied and shall post a copy of the decision in the office of the board.

(c) Denial.--If an application is denied, the board shall provide the applicant with the specific reasons for the denial. The applicant shall be entitled to a hearing if a hearing is requested within five days of the decision.

(d) Posting of notice.--Every applicant for a license under this article or for the transfer of an existing license to another premises not then licensed shall post, for a period of at least 60 days beginning with the day the application is filed with the board, in a conspicuous place on the outside of the premises or at the proposed new location for which the license is applied, a notice of the application in the form, of the size and containing all information as the board may require by regulation.

(e) Hearing.--The board shall hold a hearing on any application for a license under this article upon the request of any resident residing within a radius of 500 feet of the premises, if the request is filed within 15 days of posting the notice of application under subsection (d). The board and any hearing examiner of the board shall give appropriate evidentiary weight to any testimony of such residents at the hearing. The board may provide for the holding of such hearings by hearing examiners as provided in this act. The board shall refuse any application for a license under this article which could be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of 500 feet of the premises proposed to be licensed.

(f) Notification of decision.--The board shall approve or disapprove the location and notify the successful bidder or licensee of its decision.

Section 310-A. Physical limitations.

(a) Store specifications.--

(1) The premises of each wine and spirits store shall be a self-contained unit with limited customer access dedicated solely to the sale of liquor and permitted merchandise. All purchases made within the limitations of the premises shall be paid for at a location within the confines of the liquor sales area. No wine and spirits store shall have any interior connection with any other business or with any residential building except as approved by the board.

(2) The premises of each wine and spirits wholesale operation shall be a self-contained unit with limited customer access dedicated solely to the sale of wine and spirits to licensees under this act. No wine and spirits wholesale operation shall have any interior connection with any other business or with any residential building.

(b) Relocation information.--Upon notice of a successful bid on a franchise or an application to relocate, each applicant for a license under this article shall submit a description of the premises and any other material, information and description of the plan of that premises where it is proposed to keep and sell liquor as may be required by the regulations of the board.

(c) Details.--The descriptions, information and plans under subsection (b) shall show the proposed location of the premises and any alterations proposed to be made to the described premises or shall show the new building proposed to be constructed after the approval by the board of the application for a franchise or for the transfer of an existing license to another premises not then licensed.

Section 311-A. Denial or revocation of application.

Hearings on the denial of an application or on the refusal to

renew a license under this article shall be held in accordance with the procedures established in section 464.

Section 312-A. Bidding.

(a) Process.--The granting of franchises under this article shall be by sealed competitive bids to the highest responsible bidder. No bid shall be considered unless the bond required under this section has been submitted to the board. All bids for a franchise may be rejected by the board if the board determines that the highest bid is inadequate. Whenever the board rejects all the tendered bids, the board shall begin a new bidding process for that franchise. The board shall notify qualified bid applicants of the date and the hour of the bid openings.

(b) Posting of security.--In order to participate in the bidding under this section, bid applicants shall post bonds, cash, negotiable securities or letters of credit equal to an amount set by the board, but not less than $50,000.

(c) Submission of bids.--Each person desiring to submit a bid must file the bid with the board prior to the specified date and hour for the bid openings. Failure to deliver a bid or nonreceipt of a bid prior to the appointed date and hour shall constitute sufficient reason for rejection of a bid. Following the award of the franchise, the board shall indicate the successful bidder. A copy of each awarded bid and the bidder's application shall be maintained as public record and open to public inspection in the offices of the board. Rejection of all tendered bids by the board shall result in the opening of a new bidding process for that franchise.

(d) Conditions of franchise.--The board shall issue a franchise to a successful bidder to operate a wine and spirits store or wholesale operation within the specified franchise zone

upon satisfaction of all of the following conditions:

(1) Execution by the successful bidder of a franchise agreement.

(2) Payment in full by the successful bidder of the amount of the successful bid.

(3) Approval by the board of the successful bidder's proposed franchise location.

(4) Posting by the successful bidder of bonds in an amount determined by the board to reasonably reflect the cost of the bidder's initial inventory. Bonds posted pursuant to this paragraph shall be released by the board upon payment in full by the successful bidder of the amount due for initial inventory or shall be forfeited in the event the amount due for initial inventory is not paid in full within 15 days of the date such inventory was delivered to the wine and spirits store or wholesale operation.

(e) Unsuccessful bidder bonds.--Bonds posted by unsuccessful bidders pursuant to this section shall be released by the board upon acceptance of the successful bid.

(f) Successful bidder bonds.--Bonds posted by the successful bidder pursuant to this section shall be released by the board upon payment by the successful bidder of the initial franchise fee. A successful bidder's bond shall be forfeited if the initial franchise fee is not paid within 90 days of the date the board accepts the bid and the board shall then offer the franchise to the next highest responsible bidder. The board shall then either issue the license to the next highest bidder for the license or reject all bids and initiate a new bidding process for the retail liquor store license or wholesale operation.

(g) Deposit of initial franchise fees.--All initial franchise fees shall be deposited in the State Stores Fund established under section 802.

Section 313-A. Closure of existing State stores.

(a) Sale of State store inventory.--An awarded franchise and license shall grant the successful bidder the opportunity to bid upon the remaining inventory, tangible property and fixtures of all State stores owned by the Commonwealth pursuant to this article. The board shall establish a procedure for the sale of the inventory, property and fixtures of all State stores consistent with Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. All monetary proceeds from such sales shall be deposited in the Wine and Spirits Store Fund.

(b) Schedule of closure.--The board shall develop a schedule of closure for State stores. Under no circumstances shall any State store remain open for retail sales beyond 18 months following the initial opening date set for any wine and spirits store.

Section 314-A. Sale, assignment or transfer of license.

(a) Prohibition.--No person may sell, assign or otherwise transfer a franchise and license granted under the provisions of this article without the prior written approval of the board and payment of the fee under subsection (d).

(b) Majority interest.--For purposes of this section, the merger of a licensee or the sale of more than 50% of the outstanding stock of or partnership interests in the licensee shall be deemed to be a sale, assignment or transfer of a franchise and license under this section.

(c) Compliance.--Any person to whom a franchise and license

is sold, transferred or reissued shall comply with the provisions of this act.

(d) Transfer fees.--The following fees shall be due upon the transfer of a franchise and license granted under this article:

(1) Transfer from person to person.....$6,500.

(2) Transfer from place to place.....$5,500.

(3) Transfer both from person to person and place to place.....$7,000.

Section 315-A. Renewal or transfer.

(a) Hearings.--The board shall hold hearings on renewals or transfers as it deems necessary at such times as it shall fix for the purpose of hearing testimony. The board shall hold a hearing on any application for a renewal of a license or the transfer of any license to a new location upon the request of any person with standing to testify under subsection (b) if the request is filed with the board within the first 15 days of posting of the notice of application pursuant to section 309-A. The board may provide for the holding of such hearings by hearing examiners as provided in this act.

(b) Residents' testimony.--Where a hearing is held in the case of an application for a license or the transfer of a license under this article, the board shall permit residents residing within a radius of 500 feet of the premises to testify at the hearing. The board and any hearing examiner of the board shall give appropriate evidentiary weight to any testimony of the residents given at the hearing.

(c) Refusal.--The board shall refuse any application for a renewal or transfer which would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of 500 feet of the place proposed to be

licensed.

Section 316-A. Surrender, revocation or forfeiture of franchise and license.

Any licensee may surrender its franchise and license to the board at any time. Upon surrender, revocation or forfeiture of a franchise and license, the board shall proceed to reissue the franchise within the franchise zone by the bidding process provided in this article.

Section 317-A. Sales by wine and spirits stores.

(a) General requirements.--Every wine and spirits store may sell liquor for consumption off-premises. In addition to the sale of liquor, wine and spirits stores may sell related merchandise within the controlled area of the store. Sales of related merchandise shall not exceed 30% of the gross annual sales of any wine and spirits store. Wine and spirits stores have no authority under any circumstances to sell malt or brewed beverages. The board shall promulgate regulations setting forth what additional related merchandise may be offered for retail sale in wine and spirits stores.

(b) Separate business prohibited.--No licensee shall engage in any separate business activities upon any licensed premises without prior approval of the board.

(c) Other licensees.--Licensees under section 401 may purchase wine and liquor from a wine and spirits store.

(d) Hours of operation.--

(1) Wine and spirits store licensees may sell wine or spirits between 2 a.m. of any Monday and 12 midnight of the following Saturday to holders of a liquor license or permit issued by the board.

(2) Wine and spirits store licensees may sell wine or

spirits between 8 a.m. and 11 p.m. of any day except Sunday to persons not licensed or permitted by this act.

(3) In addition to the hours authorized under paragraphs (1) and (2), wine and spirits store licensees may, upon purchasing a permit from the board at an annual fee of $500, sell wine or spirits to persons not licensed under this act or to a holder of a special occasion permit on Sunday between the hours of 12 noon and 5 p.m.

(e) Age limitations.--An employee of a wine and spirits store licensee shall be 21 years of age or older.

Section 318-A. Sales by wine and spirits wholesalers.

(a) Sales regulated.--

(1) Every wine and spirits wholesaler may sell liquor for consumption off-premises to any licensee permitted to sell wine or spirits for on-premises or off-premises consumption under this act.

(2) Wine and spirits wholesalers shall have no authority under any circumstances to sell liquor to persons not licensed under this act.

(3) Wine and spirits wholesalers shall have no authority under any circumstances to sell malt or brewed beverages.

(4) A wine and spirits wholesaler shall have no authority under any circumstances to engage in variable pricing in sales of liquor to persons licensed under this act. For the purposes of this paragraph, "variable pricing" shall mean any disparity in the price of an item sold to one licensee as compared to the price of the same item to another licensee or a licensee of a different classification, except that the term shall not include discounts for volume purchases and additional fees for delivery of purchases.

(b) Separate business prohibited.--No licensee shall engage in any separate business activities upon any licensed premises without prior approval of the board.

(c) Hours of operation.--Wine and spirits wholesale licensees may sell wine or spirits between 2 a.m. of any Monday and 12 midnight of the following Saturday.

(d) Age limitations.--Nothing in this act, or any regulation promulgated thereunder, shall prohibit or prevent any wine and spirits wholesaler licensee from employing any person who is 18 years of age or older.

Section 319-A. Records.

All of the business and financial books and records at the wine and spirits store location or any wholesale operation shall be available at any time for inspection and audit by the board. The board may audit all books and records and audit the physical inventory of the wine and spirits store or wholesale operation at any time. The board shall audit each wine and spirits store or wholesale operation at least once every three years. Failure to permit a review or an audit under this section is grounds for revocation.

Section 320-A. Unlawful acts relating to wine and spirits store licensees.

(a) Locations restricted.--No wine and spirits store licensee shall operate any theater, circus, museum or other place of amusement or any bowling alley, game room, video arcade or other recreational area or have any passageway or connection between a licensed premises and a place of amusement or recreation.

(b) Passageway or connection prohibited.--No wine and spirits wholesale licensee shall have any passageway or

connection between a licensed premises and any other place of business.

(c) Consumption on premises.--No licensee under this article shall permit the consumption of alcoholic beverages on or immediately adjacent to the premises of the licensed wholesale operation, except that the board may, by regulation, provide for the sampling or tasting of products within the licensed premises by licensees, servants, agents and employees.

(d) Location restrictions.--No wine and spirits store or wholesale operation shall be located within 300 feet of any church, school, hospital, charitable institution or playground.

Section 321-A. Civil penalties.

(a) General rule.--In addition to the penalties set forth in sections 471 and 494, any licensee who violates any provision of this article or regulation promulgated pursuant thereto may be assessed a civil penalty by the board of not less than $100 and not more than $5,000 per violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the board shall consider all of the following:

(1) The licensee's history of previous violations.

(2) The appropriateness of such penalty to the size of the business of the licensee charged.

(3) The gravity of the violation.

(4) The demonstrated good faith of the licensee charged in attempting to achieve compliance after notification of a violation.

(b) Notice.--A civil penalty shall be assessed after the board has given at least ten days' notice to the licensee. Notice shall be in writing, shall state the reason for the proposed penalty and the amount thereof and shall designate a

time and place for a hearing. Notice shall be sent by certified mail to the address for which the license was issued.

Section 322-A. Suspension or revocation.

(a) Authority of board.--The board shall have the authority to refuse to issue and the authority to suspend or revoke a license issued under this article when the board finds that any of the following apply:

(1) The licensee has violated any of the provisions of this act or any regulations of the board.

(2) The applicant or licensee has knowingly presented to the board false, incomplete or misleading information relating to licensure or to the operation of a franchise.

(3) The applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony by a judge or jury in any Federal or state court.

(4) The licensee failed to operate the business or to provide a reasonable level of consumer service.

(b) Hearings.--Suspension and revocation hearings shall be held in accordance with the procedures in section 514.

(c) Sales restricted.--No person may sell liquor at any premises if the license applicable to that premises has been forfeited, suspended or revoked or has expired.

(d) Public sale.--In the event of the revocation, forfeiture or surrender of any license in accordance with this act, the board shall also revoke the franchise and conduct a public sale to grant to the highest responsible bidder a replacement license for the duration of the franchise period as prescribed by the board.

Section 323-A. Training.

A wine and spirits store manager and at least 75% of the

employees of a wine and spirits store shall complete Responsible Alcohol Management Control Program training in accordance with section 471.1.

SUBARTICLE B

REEMPLOYMENT AND RETRAINING OF

DISPLACED BOARD EMPLOYEES

Section 331-A. Preference in employment hiring.

(a) Commonwealth examinations.--If a full-time employee of the board whose employment is terminated as a result of the closing of a State store or wholesale operation successfully passes a civil service appointment examination for a paid position and establishes the qualifications required by law for appointment to the position, he shall be marked or graded an additional three points above the mark or grade credited for the examinations, and the total mark or grade thus obtained shall represent the final mark or grade of the said employee and determine his standing on any eligible list, certified or furnished to the appointing power.

(b) Certification.--The commission shall require the board to produce certification for each such individual referred to in subsection (a) in order to establish eligibility for the preference granted under this section.

(c) Expiration.--This section shall expire two years from the effective date of this section.

Section 332-A. Educational grant eligibility.

(a) Eligibility.--A full-time employee of the board whose employment is terminated as a result of the closing of a State store or wholesale operation shall be eligible for a two-year educational grant for any program of instruction at an accredited college, university or technical training school in

this Commonwealth in the amount of $1,000 per year.

(b) Certification.--Such grant voucher shall be made available to each qualified employee of the board upon termination of employment. Each voucher shall be certified by the board before the voucher is provided to the qualified employee, and the Department of Revenue shall be informed of each qualified employee to whom a voucher has been provided.

Section 333-A. Reemployment tax credit.

(a) Eligibility.--A full-time employee of the board whose employment is terminated as a result of the closing of a State store or wholesale operation shall be eligible for a two-year reemployment tax credit voucher in the amount of $1,000 per taxable year. Such voucher shall be made available to each qualified employee of the board upon termination of employment. Each voucher shall be certified by the board before the voucher is provided to the qualified employee, and the Department of Revenue shall be informed of each qualified employee to whom a voucher has been provided.

(b) Transfer of voucher.--Any employer in this Commonwealth who employs a former employee of the board may, upon transfer of the voucher from the employee to the employer, use the voucher as a credit against the State tax liability of the business, provided that the employer can demonstrate the following:

(1) That the employee for whom the tax credit is being sought was terminated from a State store within 12 months of being employed by the employer.

(2) That the former board employee has been employed by the employer seeking the tax credit for a period not less than one year.

(c) Voucher submittal.--The employer shall submit the tax

credit voucher to the Department of Revenue along with the information required under subsection (b)(1) and (2) in conjunction with the filing of a State business tax identified in subsection (d)(2).

(d) Amount of credit.--

(1) An employer may claim a reemployment tax credit for every job filled by a former board employee of $1,000 per taxable year for a maximum of two taxable years.

(2) An employer may apply the reemployment tax credit to 100% of the employer's State corporate net income tax, capital stock and franchise tax or the personal tax of a shareholder of the company if the company is a Pennsylvania S corporation, gross premiums tax, gross receipts tax, bank and trust company shares tax, mutual thrift institution tax, title insurance company shares tax, personal income tax or the personal income tax of a shareholder of a Pennsylvania S corporation or any combination thereof.

(3) A former board employee whose employment is terminated with an employer who has utilized the reemployment tax credit voucher to claim a one-year $1,000 tax credit may transfer the voucher to a new employer who may use the remaining $1,000 tax credit as a claim against the business tax liability identified in paragraph (2).

(4) The term of the reemployment tax credit voucher may not exceed two years from the date the voucher is provided to the qualified former board employee.

SUBARTICLE C

WINE AND SPIRITS TAXES

Section 341-A. Excise tax on wine and spirits.

(a) Duty of licensee.--A wine and spirits wholesale licensee

shall have the duty to collect from every manufacturer and importer of wine and spirits an excise tax for wine and spirits sold in this Commonwealth at a rate prescribed in subsections (b) and (c).

(b) Vinous tax rates.--The excise tax rate for wine and natural sparkling wine shall be as follows:

(1) For wines, except natural sparkling wines, containing 0.5% or more alcohol by volume and less than 17.259% alcohol by volume, there shall be paid by all manufacturers and distributors a tax at the rate of $3.50 per gallon.

(2) For wines, except natural sparkling wines, containing 17.259% or more alcohol by volume, there shall be paid by manufacturers and distributors a tax at the rate of $4 per gallon.

(3) For natural sparkling wines, there shall be paid by all manufacturers and distributors a tax at the rate of $4.50 per gallon.

(c) Liquor tax rate.--The excise tax for liquors, other than those prescribed under subsection (b), shall be as follows:

(1) For liquor containing less than 17.259% of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate of $5 per gallon.

(2) For liquor containing 17.259% or more of alcohol by volume and not more than 55.780% of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate of $6.50 per gallon.

(3) For liquor containing more than 55.780% of alcohol by volume, there shall be paid by every manufacturer and distributor a tax at the rate of $7 per gallon.

(d) Remittal of taxes.--Every wine and spirits wholesale licensee within this Commonwealth shall remit taxes imposed and collected under this section to the Department of Revenue monthly on or before the 10th day of the following month.

(e) Exceptions.--The taxes imposed under this section shall not apply to:

(1) Malt or brewed beverages.

(2) Liquor sold to a post exchange, ship service store or base exchange located in a military, naval or air force reservation within this Commonwealth.

Section 342-A. Tax on retail sales of wine and liquor.

(a) Imposition.--A tax of 6% is imposed on each retail sale of wine and liquor for on-premises or off-premises consumption by a licensee to an unlicensed person.

(b) Collection.--A wine and spirits store licensee shall collect and remit to the Department of Revenue the sales and use tax as provided by Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as prescribed in subsection (a).

Section 9. Section 401(a) of the act, amended July 6, 2005 (P.L.135, No.39), is amended to read:

Section 401. Authority to Issue Liquor Licenses to Hotels, Restaurants and Clubs.--(a) Subject to the provisions of this act and regulations promulgated under this act, the board shall have authority to issue a retail liquor license for any premises kept or operated by a hotel, restaurant or club and specified in the license entitling the hotel, restaurant or club to purchase liquor from a [Pennsylvania Liquor Store] licensee under Article III-A and to keep on the premises such liquor and, subject to the provisions of this act and the regulations made thereunder,

to sell the same and also malt or brewed beverages to guests, patrons or members for consumption on the hotel, restaurant or club premises. Such licensees, other than clubs, shall be permitted to sell malt or brewed beverages for consumption off the premises where sold in quantities of not more than one hundred ninety-two fluid ounces in a single sale to one person as provided for in section 407. Such licenses shall be known as hotel liquor licenses, restaurant liquor licenses and club liquor licenses, respectively. No person who holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States of America or the penal laws of the Commonwealth of Pennsylvania or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any hotel or restaurant liquor license, nor shall such a person have any interest, directly or indirectly, in any such license.

* * *

Section 10. Section 408.12(g), (h) and (i) of the act, added July 1, 1994 (P.L.402, No.61), are amended to read:

Section 408.12. Wine Auction Permits.--* * *

(g) Any wine sold under this section shall be purchased from a [Pennsylvania Liquor Store] <u>licensee under Article III-A</u>, a Pennsylvania limited winery or any seller authorized to sell wine by the bottle or case in this Commonwealth or shall be donated by a person who is neither a licensee nor a permittee who has legally acquired the wine and legally possesses it in this Commonwealth.

(h) If any wine sold under this section is purchased from a seller other than a [Pennsylvania Liquor Store] <u>licensee under Article III-A</u> or a Pennsylvania limited winery, the permittee

shall provide thirty days' notice to the board of its intent to purchase such wine. The notice shall include a description of the wine to be purchased, the quantity to be purchased, the name of the seller and any other information which the board may require. The permittee shall comply with all board regulations regarding taxes and fees.

(i) The permittee shall be responsible for paying to the board an amount equal to all taxes which would have been paid on such wine if it had been purchased from a [Pennsylvania Liquor Store] <u>licensee under Article III-A</u>, together with a processing fee to be determined by the board.

* * *

Section 11. Section 410(e) of the act is amended to read:

Section 410. Liquor Importers' Licenses; Fees; Privileges; Restrictions.--* * *

(e) Importers' licenses shall permit the holders thereof to bring or import liquor from other states, foreign countries, or insular possessions of the United States, and purchase liquor from manufacturers located within this Commonwealth, to be sold outside of this Commonwealth or to [Pennsylvania Liquor Stores] <u>licensees under Article III-A</u> within this Commonwealth, or when in original containers of ten gallons or greater capacity, to licensed manufacturers within this Commonwealth.

All importations of liquor into Pennsylvania by the licensed importer shall be consigned to [the board or] the principal place of business or authorized place of storage maintained by the licensee.

* * *

Section 11.1. The act is amended by adding a section to read:

Section 448. Tax on Retail Sales of Malt and Brewed Beverages.--(a) A tax of 6% is imposed on each retail sale of malt or brewed beverages for on-premises or off-premises consumption by a licensee to an unlicensed person.

(b) A licensee under this subarticle shall collect and remit to the Department of Revenue the sales and use tax as provided under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as prescribed in subsection (a).

Section 12. Section 472(a) of the act, amended February 21, 2002 (P.L.103, No.10), is amended to read:

Section 472. Local Option.--(a) In any municipality or any part of a municipality where such municipality is split so that each part thereof is separated by another municipality, an election may be held, subject to subsection (c), on the date of the primary election immediately preceding any municipal election, but not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to hotels, restaurants, resort facilities and clubs, not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to public venues, to performing arts facilities, to continuing care retirement communities, to hotels located on property owned by an accredited college or university, to privately-owned private golf courses or to privately-owned public golf courses, not oftener than once in four years, to determine the will of the electors with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years, to determine the will of the electors with respect to granting of licenses to wholesale distributors and

importing distributors, not more than once in two years, to determine the will of the electors with respect to the granting of club liquor licenses or club retail dispenser licenses to incorporated units of national veterans' organizations, not oftener than once in two years to determine the will of the electors with respect to the granting of special occasion permits to qualified organizations, or not more than once in four years, to determine the will of the electors with respect to the establishment[, operation and maintenance by the board of Pennsylvania liquor stores] <u>of wine and spirits store licensees</u>, within the limits of such municipality or part of a split municipality, under the provisions of this act: Provided, however, Where an election shall have been held at the primary preceding a municipal election in any year, another election may be held under the provisions of this act at the primary occurring the fourth year after such prior election: And provided further, That an election on the question of establishing and operating a State liquor store shall be initiated only in those municipalities, or that part of a split municipality that shall have voted against the granting of liquor licenses; and that an election on the question of granting wholesale distributor and importing distributor licenses shall be initiated only in those municipalities or parts of split municipalities that shall have at a previous election voted against the granting of dispenser's licenses. Whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in the municipality or part of a split municipality at the last preceding general election shall file a petition with the county board of elections of the county for a referendum on the question of granting any of said

classes of licenses [or the establishment of Pennsylvania liquor stores], the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at the primary immediately preceding the municipal election. Separate petitions must be filed for each question to be voted on. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions, insofar as such provisions are applicable.

When the question is in respect to the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for the sale of liquor in..... Yes
of.....? No

When the question is in respect to the granting of liquor licenses to resort facilities in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to resort facilities for the sale of liquor in the..... Yes
of.....? No

When the question is in respect to the granting of restaurant liquor licenses for use at public venues in those municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of liquor licenses to public venues for the sale of liquor in the..... Yes
of.....? No

When the question is in respect to the granting of restaurant liquor licenses for use at performing arts facilities in those

municipalities that do not already allow the retail sale of alcohol, it shall be in the following form:

Do you favor the granting of liquor licenses to performing arts facilities for the sale of liquor in the..... Yes

of.....? No

When the question is in respect to the granting of liquor licenses for hotels located on property owned by an accredited college or university in those municipalities that do not already allow the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses to hotels on property owned by an accredited college or university in the..... Yes

of.....? No

When the question is in respect to the granting of liquor licenses, for privately-owned private golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for privately-owned private golf courses for the sale of liquor in.....by..... Yes

of.....? No

When the question is in respect to the granting of liquor licenses, for privately-owned public golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for privately-owned public golf courses for the sale of liquor in.....by..... Yes

of.....? No

When the question is in respect to the granting of liquor

licenses to continuing care retirement communities in those municipalities that have not already approved the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for continuing care retirement communities in.....by..... Yes
of.....? No

When the question is in respect to the granting of licenses to retail dispensers of malt and brewed beverages, it shall be in the following form:

Do you favor the granting of malt and brewed beverage retail dispenser licenses for consumption on premises where sold in the..... Yes
of.....? No

When the question is in respect to the granting of licenses to wholesale distributors of malt or brewed beverages and importing distributors, it shall be in the following form:

Do you favor the granting of malt and brewed beverage wholesale distributor's and importing distributor's licenses not for consumption on premises where sold in the..... Yes
of.....? No

When the question is in respect to the granting of club liquor licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club liquor licenses to incorporated units of national veterans' organizations in the..... Yes
of.....? No

When the question is in respect to the granting of club

retail dispenser licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club retail dispenser licenses to incorporated units of national veterans' organizations in the..... Yes
of.....? No

When the question is in respect to the granting of special occasion permits allowing the sale of liquor by qualified organizations in municipalities that do not already allow the retail sale of liquor, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of liquor by qualified organizations in the..... Yes
of.....? No

When the question is in respect to the granting of special occasion permits allowing the sale of malt or brewed beverages only by qualified organizations in municipalities that do not already allow the retail sale of malt or brewed beverages, it shall be in the following form:

Do you favor the granting of special occasion permits to allow the sale of malt or brewed beverages only by qualified organizations in the..... Yes
of.....? No

When the question is in respect to the [establishment, operation and maintenance of Pennsylvania liquor stores] <u>granting of licenses to wine and spirits store operators</u> it shall be in the following form:

Do you favor the [establishment, operation and maintenance of Pennsylvania liquor stores] <u>granting of wine and spirits store licenses</u> in Yes
No

the.....

of.....?

In case of a tie vote, the status quo shall obtain. If a majority of the voting electors on any such question vote "yes," then liquor licenses shall be granted by the board to hotels, restaurants, resort facilities and clubs, or liquor licenses shall be granted by the board to public venues, to performing arts facilities, to continuing care retirement communities, to hotels located on property owned by an accredited college or university, to privately-owned private golf courses or to privately-owned public golf courses, or malt and brewed beverage retail dispenser licenses or wholesale distributor's and importing distributor's license for the sale of malt or brewed beverages shall be granted by the board, or club liquor licenses or club retail dispenser licenses shall be granted by the board to incorporated units of national veterans' organizations, or special occasion permits may be issued to qualified organizations, or [the board may establish, operate and maintain Pennsylvania liquor stores] <u>to wine and spirits store licensees under Article III-A</u>, as the case may be, in such municipality or part of a split municipality, as provided by this act; but if a majority of the electors voting on any such question vote "no," then the board shall have no power to grant or to renew upon their expiration any licenses of the class so voted upon in such municipality or part of a split municipality[; or if the negative vote is on the question in respect to the establishment, operation and maintenance of Pennsylvania liquor stores, the board shall not open and operate a Pennsylvania liquor store in such municipality or part of a split municipality, nor continue to operate a then existing

Pennsylvania liquor store in the municipality or part of a split municipality for more than two years thereafter or after the expiration of the term of the lease on the premises occupied by such store, whichever period is less, unless and until at a later election a majority of the voting electors vote "yes" on such question].

* * *

Section 13. Section 488 of the act, added February 21, 2002 (P.L.103, No.10), is amended to read:

Section 488. Shipment of Wine into Commonwealth.--(a) The shipment of wine from out-of-State to residents of this Commonwealth is prohibited, except as otherwise provided for in this section.

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

(c) Each month, the board shall publish on the Internet a list of all classes, varieties and brands of wine available for sale [in the Pennsylvania Liquor Stores] <u>by wine and spirits store licensees</u>. A person holding a direct shipper license may ship only those classes, varieties and brands of wine not included on the list <u>available for sale</u> at the time an Internet order is placed.

(d) An out-of-State wine shipper shall:

(1) Not ship more than nine liters per month on the Internet order of any person in this Commonwealth.

(2) Report to the board each year the total of wine shipped into this Commonwealth in the preceding calendar year.

(3) Permit the board or the Secretary of Revenue, or their designated representatives, to perform an audit of the out-of-State wine shipper's records upon request.

(4) Be deemed to have submitted to the jurisdiction of the board, any other State agency and the courts of this Commonwealth for purposes of enforcement of this section and any related laws, rules or regulations.

(e) A direct shipper may ship wine on the Internet order of a resident into this Commonwealth provided that the wine is shipped to a [Pennsylvania Liquor Store] wine and spirits store selected by the resident. The wine will be subject to taxes in the same manner as wine sold [directly by the board] by the wine and spirits store licensee. The wine will not be released by the [State] wine and spirits store until all moneys due, including all taxes and fees, have been paid by the resident.

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

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

(h) The board shall submit monthly reports to the Appropriations Committee and the Law and Justice Committee of the Senate and to the Appropriations Committee and the Liquor Control Committee of the House of Representatives summarizing the number of direct shipper licenses issued by the board, the quantity of wine sold pursuant to this section and the total dollar value of sales under this section.

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

Section 14. Section 491 of the act, amended October 5, 1994 (P.L.522, No.77), February 21, 2002 (P.L.103, No.10), December 9, 2002 (P.L.1653, No.212), July 17, 2003 (P.L.63, No.15) and July 7, 2006 (P.L.584, No.84), is amended to read:

Section 491. Unlawful Acts Relative to Liquor, Alcohol and Liquor Licensees.--

It shall be unlawful--

(1) Sales of Liquor. For any person, by himself or by an employe or agent, to expose or keep for sale, or directly or indirectly, or upon any pretense or upon any device, to sell or offer to sell any liquor within this Commonwealth, except in accordance with the provisions of this act and the regulations of the board. This clause shall not be construed to prohibit hospitals, physicians, dentists or veterinarians who are licensed and registered under the laws of this Commonwealth from administering liquor in the regular course of their professional work and taking into account the cost of the liquor so

administered in making charges for their professional service, or a pharmacist duly licensed and registered under the laws of this Commonwealth from dispensing liquor on a prescription of a duly licensed physician, dentist or veterinarian, or selling medical preparations containing alcohol, or using liquor in compounding prescriptions or medicines and making a charge for the liquor used in such medicines, or a manufacturing pharmacist or chemist from using liquor in manufacturing preparations unfit for beverage purposes and making a charge for the liquor so used. All such liquors so administered or sold by hospitals, physicians, dentists, veterinarians, pharmacists or chemists shall conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia. This clause shall not be construed to prohibit an executor or an administrator of a decedent's estate from selling privately or at public auction liquor which was an asset of the decedent. The board shall establish regulations to ensure that State taxes from the sales will be paid by the estate from the proceeds of the sale. The board may not prohibit a sale of liquor for the reason that it was not lawfully acquired prior to January 1, 1934 or has not been purchased [from a Pennsylvania Liquor Store or] in compliance with Pennsylvania law.

(2) Possession or Transportation of Liquor or Alcohol. For any person, except a manufacturer or the board or the holder of a sacramental wine license or of an importer's license, to possess or transport any liquor or alcohol within this Commonwealth which was not lawfully acquired prior to January first, one thousand nine hundred and thirty-four, or has not been <u>legally</u> purchased from a [Pennsylvania Liquor Store] <u>licensee under Article III-A</u> or a licensed limited winery in

Pennsylvania, except in accordance with section 488 or the board's regulations. In addition, it shall be lawful for anyone to possess miniatures totaling less than one gallon purchased in another state or a foreign country. The burden shall be upon the person possessing or transporting such liquor or alcohol to prove that it was so acquired. Notwithstanding this section or any other provision of the law, wine may be produced by any person without a license if the wine is not produced for sale and total production does not exceed two hundred gallons per calendar year. Wine produced in accordance with this clause may be used at organized affairs, exhibitions, competitions, contests, tastings or judgings if it is not sold or offered for sale.

None of the provisions herein contained shall prohibit nor shall it be unlawful for any person to import into Pennsylvania, transport or have in his possession, an amount of liquor not exceeding one gallon in volume upon which a State tax has not been paid, if it can be shown to the satisfaction of the board that such person purchased the liquor in a foreign country or United States territory and was allowed to bring it into the United States. Neither shall the provisions contained herein prohibit nor make it unlawful for (i) any member of the armed forces on active duty, or (ii) any retired member of the armed forces, or (iii) any totally disabled veteran, or (iv) the spouse of any person included in the foregoing classes of persons to import into Pennsylvania, transport or have in his possession an amount of liquor not exceeding one gallon per month in volume upon which the State tax has not been paid, so long as such liquor has been lawfully purchased from a package store established and maintained under the authority of the

United States and is in containers identified in accordance with regulations issued by the Department of Defense. Such liquor shall not be possessed, offered for sale or sold on any licensed premises.

None of the provisions herein contained shall prohibit nor shall it be unlawful for any consul general, consul or other diplomatic officer of a foreign government to import into Pennsylvania, transport or have in his possession liquor upon which a State tax has not been paid, if it can be shown to the satisfaction of the board that such person acquired the liquor in a foreign country and was allowed to bring it into the United States. Such liquor shall not be possessed, offered for sale or sold on any licensed premises.

Any person violating the provisions of this clause for a first offense involving the possession or transportation in Pennsylvania of any liquor in a package (bottle or other receptacle) or wine not <u>legally</u> purchased from a [Pennsylvania Liquor Store] <u>licensee under Article III-A</u> or from a licensed limited winery in Pennsylvania, with respect to which satisfactory proof is produced that the required Federal tax has been paid and which was purchased, procured or acquired legally outside of Pennsylvania shall upon conviction thereof in a summary proceeding be sentenced to pay a fine of twenty-five dollars ($25) for each such package, plus costs of prosecution, or undergo imprisonment for a term not exceeding ninety (90) days. Each full quart or major fraction thereof shall be considered a separate package (bottle or other receptacle) for the purposes of this clause. Such packages of liquor shall be forfeited to the Commonwealth in the manner prescribed in Article VI of this act but the vehicle, boat, vessel, animal or

aircraft used in the illegal transportation of such packages shall not be subject to forfeiture: Provided, however, That if it is a second or subsequent offense or if it is established that the illegal possession or transportation was in connection with a commercial transaction, then the other provisions of this act providing for prosecution as a misdemeanor and for the forfeiture of the vehicle, boat, vessel, animal or aircraft shall apply.

(3) Purchase of Liquor or Alcohol. For any person within this Commonwealth, by himself or by an employe or agent, to attempt to purchase, or directly or indirectly, or upon any pretense or device whatsoever, to purchase any liquor or alcohol from any person or source [other than a Pennsylvania Liquor Store], except in accordance with the provisions of this act or the regulations of the board.

(4) Possession and Use of Decanters. For any person to use decanters of alcoholic beverages except that the use of decanters or other similar receptacles by licensees shall be permitted in the case of wines and then only in accordance with the regulations of the board, but nothing herein contained shall prohibit the manufacture and possession of wine as provided in clause (2) of this section.

(5) Failure to Properly Dispose of Empty Liquor Containers. For any restaurant, hotel or club licensee, his servants, agents or employes, to fail to break any package in which liquors were contained, except those decanter packages that the board determines to be decorative, within twenty-four hours after the original contents were removed therefrom, unless the licensee participates in either a municipal recycling program, in accordance with the act of July 28, 1988 (P.L.556, No.101),

known as the "Municipal Waste Planning, Recycling and Waste Reduction Act," or a voluntary recycling program. The licensee shall provide proof in writing of the participation in a recycling program upon the demand of the Bureau of Liquor Control Enforcement of the Pennsylvania State Police. The proof of participation shall be provided in a manner as prescribed by the Pennsylvania Liquor Control Board.

(6) Sales by Restaurant and Hotel Liquor Licensees. For any restaurant or hotel licensee, his servants, agents or employes, to sell any liquor or malt or brewed beverages for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, but this section shall not be interpreted to prohibit a restaurant liquor licensee from providing private affairs the primary function of which is for catering only to weddings or special occasions arranged twenty-four hours in advance, nor to prohibit a hotel licensee, or a restaurant licensee when the restaurant is located in a hotel, from selling liquor or malt or brewed beverages in any room of such hotel occupied by a bona fide guest or to prohibit a restaurant licensee from selling liquor or malt or brewed beverages in a bowling alley where the restaurant and bowling alley are immediately adjacent and under the same roof.

(7) Sales of Liquor by Manufacturers and Licensed Importers. For any manufacturer or licensed importer of liquor in this Commonwealth, his agents, servants or employes, to sell or offer to sell any liquor in this Commonwealth except to [the board for use in Pennsylvania Liquor Stores] <u>a licensee under Article III-A</u>, and in the case of a manufacturer, to the holder of a sacramental wine license or an importer's license.

Notwithstanding any other provision of this act, a manufacturer or licensed importer may sell or offer to sell liquor for delivery outside of this Commonwealth.

(8) Importation and Sales of Alcohol. For any person, to import alcohol into this Commonwealth, or to sell alcohol to any person, except in accordance with section 488 and the provisions of this act or the regulations of the board.

(9) Possession of Alcohol. For any person, to have alcohol in his possession, except in accordance with the provisions of this act and the regulations of the board.

(10) Fortifying, Adulterating or Contaminating Liquor. For any licensee or any employe or agent of a licensee or of the board, to fortify, adulterate or contaminate any liquor, except as permitted by the regulations of the board, or to refill wholly or in part, with any liquid or substance whatsoever, any liquor bottle or other liquor container.

(11) Importation of Liquor. For any person, other than [the board] a wine and spirits wholesale licensee or the holder of a sacramental wine license, an importer's license or a direct shipper's license, to import any liquor whatsoever into this Commonwealth, but this section shall not be construed to prohibit railroad and pullman companies from purchasing and selling liquors purchased outside the Commonwealth in their dining, club and buffet cars which are covered by public service liquor licenses and which are operated in this Commonwealth.

(12) Delivery of Liquor by Certain Licensees. For a liquor licensee permitted to deliver liquor, to make any deliveries except in his own vehicles bearing his name, address and license number on each side in letters not smaller than four inches in height, or in the vehicle of another person duly authorized to

transport liquor within this Commonwealth.

(13) Violation of Certain Rules and Regulations of Board. For any person, to violate any rules and regulations adopted by the board [to insure the equitable] relating to wholesale and retail sale and distribution of liquor and alcohol through [the Pennsylvania Liquor Stores] licensees under Article III-A.

(14) Offering Commission or Gift to Members of Board or State Employe. For any person selling or offering to sell liquor or alcohol to, or purchasing at wholesale liquor or alcohol from, the board, either directly or indirectly, to pay or offer to pay any commission, profit or remuneration, or to make or offer to make any gift to any member or employe of the board or other employe of the Commonwealth or to anyone on behalf of such member or employe.

Section 15. Section 493(1) and (11) of the act, amended June 18, 1998 (P.L.664, No.86) and December 8, 2004 (P.L.1810, No.239), are amended to read:

Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.--The term "licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful--

(1) Furnishing Liquor or Malt or Brewed Beverages to Certain Persons. For any licensee [or the board,] or any employe, servant or agent of such licensee [or of the board], or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor: Provided further, That

notwithstanding any other provision of law, no cause of action will exist against a licensee [or the board] or any employe, servant or agent of such licensee [or the board] for selling, furnishing or giving any liquor or malt or brewed beverages or permitting any liquor or malt or brewed beverages to be sold, furnished or given to any insane person, any habitual drunkard or person of known intemperate habits unless the person sold, furnished or given alcohol is visibly intoxicated or is a minor.

* * *

(11) Licensees Employed by Others. For any hotel, restaurant or club liquor licensee, or any malt or brewed beverage licensee, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any wine and spirits wholesaler, wine and spirits store, distributor, importing distributor, manufacturer, importer or vendor licensee or any out of State manufacturer. It shall also be unlawful for any distributor or importing distributor, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any other wine and spirits wholesaler, wine and spirits store, distributor, importing distributor, manufacturer, importer, vendor, out of State manufacturer, hotel restaurant, malt or brewed beverage licensee, or club liquor licensee. It shall also be unlawful for any manufacturer, importer, or vendor licensee, or any out of State manufacturer, or any officer, servant, agent or employe of such licensee or manufacturer, to be at the same time employed, directly or indirectly, by any wine and spirits wholesaler, wine and spirits store, hotel, restaurant or club liquor licensee or any malt or brewed beverage licensee or any distributor or importing distributor

licensee. Nothing in this subsection shall be construed to prohibit a manufacturer or limited winery licensee, or any officer, servant, agent or employe of such licensee, to be employed at the same time by a hotel, restaurant or retail dispenser licensee if the hotel, restaurant or retail dispenser licensee is located at the manufacturer or limited winery premises pursuant to section 443. For the purposes of this subsection, an officer, servant, agent or employe of a licensee or manufacturer is an individual who has either an ownership interest in the licensee or manufacturer or who receives compensation for his or her work on behalf of the licensee or manufacturer.

* * *

Section 16. Section 495 of the act, amended December 20, 1996 (P.L.1523, No.199), February 21, 2002 (P.L.103, No.10) and December 16, 2002 (P.L.1806, No.221) and repealed in part March 25, 1988 (P.L.262, No.31), is amended to read:

Section 495. Identification Cards; Licensees and [State Liquor Store] Employes Saved From Prosecution.--(a) The valid photo driver's license or identification card issued by the Department of Transportation or by any other state, a valid armed forces of the United States identification card, a valid passport or a travel visa issued by the United States or a foreign country that contains the holder's photograph shall, for the purpose of this act, be accepted as an identification card.

(b) Such identification card shall be presented by the holder thereof upon request of any [State Liquor Store or any] licensee, or the servant, agent or employe thereof, for the purpose of aiding such [store,] licensee, or the servant, agent or employe to determine whether or not such person is twenty-one

years of age and upwards, when such person desires alcoholic beverage at a [State Liquor Store or] licensed establishment.

(c) In addition to the presentation of such identification card, the agent of the [State Liquor Store or the] licensee, or his servant, agent or employe, may require the person whose age may be in question to fill in and sign a form containing language approved by the board or containing the following:

..... 19

I,....., hereby represent to ....., a [State Store or] licensee of the board, that I am of full age and discretion and over the age of 21 years, having been born on ..... 19..... at ..... This statement is made to induce said [store or] licensee above named to sell or otherwise furnish alcoholic beverages to the undersigned.

Serial Number of Identification Card:

I understand that I am subject to a fine of $300.00 and sixty days imprisonment for any misrepresentation herein.

.....

(Name)

.....

(Address)

Witness:

Name.....

Address.....

The forms shall be printed in a manner approved by the board and shall be filed alphabetically by the [State Liquor Store or] licensee in a file box containing a suitable alphabetical index

at or before the close of business on the day that the form is executed, and any such form shall be subject to examination by any officer, agent or employe of the enforcement bureau at any and all times.

(c.1) In addition to the requirements of subsections (b) and (c), a wine and spirits store licensee, or the servant, agent or employee of the wine and spirits store licensee, shall use swipe identification card technology to verify the age of any person who appears to be under 30 years of age. The board shall promulgate such rules and regulations as are necessary for the implementation of swipe identification card technology.

(e) No penalty shall be imposed on a licensee[,] or the licensee's employe [or State Liquor Store employe] for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), the minor completed and signed the form as set forth in subsection (c) and these documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(f) In addition to the defense set forth in subsection (e), no penalty shall be imposed on a licensee[,] or the licensee's employe [or State Liquor Store employe] for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), a photograph, photocopy or other visual or video presentation of the identification card was made and those documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(g) In addition to the defenses set forth in subsections (e) and (f), no penalty shall be imposed on a licensee[,] or a

licensee's employe [or Pennsylvania Liquor Store employe] for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), the identification card is identified as a valid card by a transaction scan device and the identification card and transaction scan results were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions. For purposes of this section, a "transaction scan device" is a device capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of an identification card set forth in subsection (a).

(h) No licensee or licensee's agent or employe shall sell or otherwise disseminate the information derived from a transaction scan to any third party, except to the board, the bureau or other law enforcement official, for any purpose, including, but not limited to, any marketing, advertising or promotional activities, except that a licensee or licensee's agent or employe may release that information pursuant to a court order. Any person who violates this subsection commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding five hundred dollars ($500) for the first offense and to pay a fine not exceeding one thousand dollars ($1,000) for subsequent offenses.

Section 17. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraphs (2) and (3) are necessary to effectuate the provisions of this act.

(2) The act of June 9, 1936 (Sp.Sess., P.L.13, No.4), entitled "An act imposing an emergency State tax on liquor,

as herein defined, sold by the Pennsylvania Liquor Control Board; providing for the collection and payment of such tax; and imposing duties upon the Department of Revenue and the Pennsylvania Liquor Control Board," is repealed.

(3) Any provision of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, relating to tax on the sale at retail of liquor is repealed to the extent it is inconsistent with section 342-A or 448.

Section 18. This act shall take effect as follows:

(1) Section 17(2) of this act shall take effect in two years.

(2) The remainder of this act shall take effect immediately