

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1770 Session of 2011

INTRODUCED BY PETRI, D. COSTA, GODSHALL, GRELL, HARRIS, KILLION, MARSICO, MILLARD, MUSTIO, O'NEILL, WATSON, EVERETT, VULAKOVICH AND SCHRODER, JULY 18, 2011

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JULY 18, 2011

AN ACT

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

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Section 488 of the act of April 12, 1951 (P.L.90,  
23 No.21), known as the Liquor Code, reenacted and amended June 29,  
24 1987 (P.L.32, No.14) and added February 21, 2002 (P.L.103,  
25 No.10), is amended to read:

26 Section 488. Shipment of Wine into Commonwealth.--(a) The

1 shipment of wine from [out-of-State] a direct wine shipper to  
2 residents of this Commonwealth is prohibited, except as  
3 otherwise provided for in this section.

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

13 (c) [Each month, the board shall publish on the Internet a  
14 list of all classes, varieties and brands of wine available for  
15 sale in the Pennsylvania Liquor Stores. A person holding a  
16 direct shipper license may ship only those classes, varieties  
17 and brands of wine not included on the list at the time an  
18 Internet order is placed] Reserved.

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

20 (1) [Not ship more than nine liters per month on the  
21 Internet order of any person in this Commonwealth.] File a  
22 written application with the board in such form and containing  
23 such information as the board shall require. A completed  
24 application shall contain a true and correct copy of the  
25 applicant's current license or certificate of operating  
26 authority issued by the board or by another state. Further, the  
27 applicant must provide documentation which evidences that it has  
28 obtained a sales tax license from the Pennsylvania Department of  
29 Revenue. The licensing period for such a license shall be  
30 established under section 402. Any applicant for such a license

1 shall be required to adhere to the provisions of section 477.  
2 The application, renewal and filing fee for such a license shall  
3 be as prescribed by the board. Notwithstanding this provision,  
4 if an applicant, at the time of the initial application for such  
5 a license, holds a valid limited winery license issued by the  
6 board, such applicant shall not be required to pay the  
7 application fee prescribed by the board. Further, provided that  
8 the applicant properly renews its limited winery license, as  
9 provided for in section 517, such applicant shall not be  
10 required to pay the renewal fee prescribed by the board.

11 (2) Report to the board each [year] month the total [of]  
12 number of bottles sold and shipped during the preceding calendar  
13 month, the size of those bottles, the name brand of each wine in  
14 such shipments, the quantities of each wine included in such  
15 shipments and the price of each item included in such shipments,  
16 for all such wine shipped within and into this Commonwealth in  
17 the preceding calendar [year] month.

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

22 (4) Be deemed to have submitted to the jurisdiction of the  
23 board, any other State agency and the courts of this  
24 Commonwealth for purposes of enforcement of this section and any  
25 related laws, rules or regulations, including the collection and  
26 remission of taxes as required under this section.

27 (e) [A direct shipper may ship wine on the Internet order of  
28 a resident into this Commonwealth provided that the wine is  
29 shipped to a Pennsylvania Liquor Store selected by the resident.  
30 The wine] Wine sold by a direct shipper pursuant to this section

1 will be subject to [taxes in the same manner as wine sold  
2 directly by the board. The wine will not be released by the  
3 State store until all moneys due, including all taxes and fees,  
4 have been paid by the resident.] the sales and use tax imposed  
5 by section 202 of the act of March 4, 1971 (P.L.6, No.2), known  
6 as the "Tax Reform Code of 1971."

7 (f) [A person shall sign an affidavit provided by the  
8 Pennsylvania Liquor Store where the wine was delivered to  
9 stating that the wine will only be used for the person's  
10 personal use.] A direct wine shipper shall only ship wine  
11 pursuant to this section provided that the resident placing the  
12 order has provided the shipper with a written or electronic  
13 acknowledgment that the wine is for personal consumption only  
14 and not for resale. Any person who resells wine obtained under  
15 this section commits a misdemeanor of the second degree.  
16 Further, all direct wine shippers shall:

17 (1) Ensure that all containers of wine shipped directly to a  
18 resident of this Commonwealth are conspicuously labeled with the  
19 words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE TWENTY-ONE (21)  
20 OR OLDER REQUIRED FOR DELIVERY."

21 (2) Ensure that shipments shall be delivered by an entity  
22 holding a valid transporter-for-hire license issued by the board  
23 and that such transporter-for-hire shall not deliver any wine  
24 unless it does all of the following:

25 (i) Obtains the signature of the recipient of the wine upon  
26 delivery.

27 (ii) Verifies by inspecting a valid form of photo  
28 identification, as provided for in section 495(a), that the  
29 recipient is at least twenty-one (21) years of age.

30 (iii) Determines that the recipient is not visibly

1 intoxicated at the time of delivery.

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

6 (g.1) On a quarterly basis, all direct wine shippers shall  
7 provide to the Pennsylvania Department of Revenue, with a copy  
8 to the board, an accounting of the taxes collected pursuant to  
9 this section. All taxes collected by the direct wine shipper  
10 shall be remitted to the Pennsylvania Department of Revenue on a  
11 quarterly basis. All direct wine shippers shall permit the  
12 board, the enforcement bureau or the Pennsylvania Department of  
13 Revenue, any additional information deemed necessary to ensure  
14 compliance with this section.

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

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

28 (j) Such licenses shall be subject to the citation process  
29 as set forth in section 471.

30 (k) Shipments of wine direct to persons in this Commonwealth

1 from persons who do not possess a direct wine shipper license  
2 from the board are prohibited. Any person who knowingly makes,  
3 participates in, transports, imports or receives such shipment  
4 commits a misdemeanor.

5 (1) All applicants for such a license shall obtain a tax  
6 bond in the amount of one thousand dollars (\$1,000).

7 Section 2. Section 493 of the act is amended by adding a  
8 paragraph to read:

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

14 It shall be unlawful--

15 \* \* \*

16 (33) Sale of wine received by direct shipment. For any  
17 licensee to sell or offer to sell any wine purchased or acquired  
18 from a direct wine shipper pursuant to the authority of section  
19 488.

20 Section 3. Section 505 of the act, amended June 25, 2010  
21 (P.L.217, No.35), is amended to read:

22 Section 505. Licenses Issued.--Upon receipt of the  
23 application in the form herein provided and the proper fees, the  
24 board may grant to such applicant a license to engage in, (a)  
25 the operation of a limited winery or a winery; or, (b) the  
26 manufacturing, producing, distilling, developing, or using in  
27 the process of manufacturing, denaturing, redistilling,  
28 recovering, rectifying, blending and reusing of alcohol and  
29 liquor; or, (c) the holding in bond of alcohol and liquor; or,  
30 (d) the holding in storage, as bailee for hire, of alcohol,

1 liquor and malt or brewed beverages; or, (e) the transporting  
2 for hire of alcohol, liquor and malt or brewed beverages. Such  
3 licenses may be transferred from one person to another or from  
4 one location to another, or both. Every applicant for a transfer  
5 of such licenses shall file a written application with the  
6 board, together with a filing fee of five hundred fifty dollars  
7 (\$550) if the transfer is to a new location, six hundred fifty  
8 dollars (\$650) if the transfer is to a new person, or seven  
9 hundred dollars (\$700) if the transfer is to a new person for  
10 use at a new location. Whenever such a license is transferred,  
11 no license or other fees shall be required from the persons to  
12 whom such transfer is made for the portion of the license period  
13 for which the license fee has been paid by the transferor. Every  
14 applicant for renewal of such licenses shall file a written  
15 application with the board together with an application  
16 surcharge of seven hundred dollars (\$700).

17 Section 4. Section 505.2(a) of the act is amended by adding  
18 a paragraph to read:

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

22 \* \* \*

23 (2.1) Notwithstanding any other provision of this act or law  
24 to the contrary, only ship wine to residents of this  
25 Commonwealth in accordance with the provisions of section 488.  
26 Further, notwithstanding any other provision of this act or law  
27 to the contrary, any sale to a licensee of the board shall take  
28 place on the licensed premises of the limited winery. A limited  
29 winery is prohibited from shipping or delivering wine sold to  
30 licensees of the board.

1       \* \* \*

2       Section 5.   This act shall take effect in 60 days.