

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 975 Session of 2017

INTRODUCED BY TURZAI, BARRAR, BERNSTINE, BLOOM, CORBIN, CORR, CUTLER, DOWLING, DUNBAR, EVANKOVICH, EVERETT, FEE, GREINER, GROVE, A. HARRIS, HELM, HICKERNELL, IRVIN, JAMES, KAMPF, KAUFFMAN, KNOWLES, MACKENZIE, MAHER, MARSHALL, MASSER, MCGINNIS, MENTZER, MILNE, MUSTIO, ORTITAY, PICKETT, REESE, ROTHMAN, SACCONI, SANKEY, SCHEMEL, SIMMONS, SONNEY, STAATS, TOPPER, WALSH, WARD, WATSON, WHEELAND AND KEEFER, APRIL 3, 2017

AS REPORTED FROM COMMITTEE ON LIQUOR CONTROL, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 18, 2017

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," in
17 preliminary provisions, further providing for definitions;
18 and, in licenses and regulations, liquor, alcohol and malt
19 and brewed beverages, providing for wine wholesale license
20 and for wine retail license.

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

23 Section 1. Section 102 of the act of April 12, 1951 (P.L.90,

1 No.21), known as the Liquor Code, is amended by adding a- <--
2 ~~definition~~ DEFINITIONS to read: <--

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

6 * * *

7 "BRAND OF WINE" SHALL MEAN A WINE PRODUCT OR SERIES OF WINE <--
8 PRODUCTS PRODUCED BY A SINGLE MANUFACTURER.

9 * * *

10 "Retail store" shall mean a reputable place operated by
11 persons of good repute which ~~primarily sells, supplies or offers~~ <--
12 ~~consumer products for sale directly to consumers and has an area~~
13 ~~under one roof of greater than five thousand square feet.~~ HAS AT <--
14 LEAST FIFTY-ONE PER CENTUM OF SALES FLOOR SPACE FOR THE SALE OF
15 FOOD, SUPPLIES FOR THE TABLE AND FOOD PRODUCTS FOR HUMAN
16 CONSUMPTION PRIMARILY OFF THE PREMISES AND WHICH HAS AN AREA
17 UNDER ONE ROOF OF GREATER THAN FIVE THOUSAND SQUARE FEET.

18 * * *

19 "VARIABLE PRICING" SHALL MEAN, FOR PURPOSES OF THE WHOLESALE <--
20 OF WINE, DISPARITY IN THE PRICE OF AN ITEM SOLD TO ONE LICENSEE
21 AS COMPARED TO THE PRICE OF THE SAME ITEM TO ANOTHER LICENSEE OR
22 A LICENSEE OF A DIFFERENT CLASSIFICATION. THE TERM SHALL NOT
23 INCLUDE A DISCOUNT FOR A VOLUME PURCHASE.

24 * * *

25 Section 2. The act is amended by adding sections to read:

26 Section 410.1. Wine Wholesale License.--(a) Notwithstanding
27 any other provision of law, an importer licensed under this
28 article may make application to the board on forms prescribed by
29 the board for a wine wholesale license for the purpose of
30 selling and distributing wholesale wine to the board, to all

1 licensees and to United States Armed Forces facilities located
2 on United States Armed Forces installations within this
3 Commonwealth. Within thirty days of the effective date of this
4 section, the board shall accept applications, and the board
5 shall approve the issuance of a license within sixty days of
6 receipt of the application if the applicant meets the
7 requirements under this section. An applicant shall submit the
8 initial license fee with the application to the board. The
9 Department of Revenue shall audit wine wholesale licensee's to
10 determine whether the holder of a wine wholesale license is
11 remitting taxes. The following shall apply:

12 (1) The wine wholesale licensee shall:

13 (i) Provide to the board a list of the brands of wine it
14 will distribute.

15 (ii) Serve the board, all licensees, United States Armed
16 Forces facilities and any other authorized person permitted to
17 purchase and resell wine under this act and make wine available
18 for sale under the same pricing structure.

19 (iii) Post a schedule of prices with the board as follows:

20 (A) A schedule of prices shall identify the filer by name,
21 address and license number on forms prescribed by the board.

22 (B) Schedules shall be filed on or before the twenty-fifth
23 day of each month and shall become effective on the first day of
24 the second succeeding calendar month. When the twenty-fifth day
25 of the month falls on a Saturday, Sunday or holiday, schedules
26 may be filed on the following business day.

27 (C) Amended schedules of prices shall be filed on a form and
28 in a manner as designated by the board no later than the
29 twentieth day of the month prior to the effective date of the
30 schedule being amended. When the twentieth day of the month

1 falls on a Saturday, Sunday or holiday, amended schedules may be
2 filed on the following business day.

3 (D) The schedules filed each month which contain a listing
4 of all brands of wine to be sold shall be known as master
5 schedules. The board may permit or require the filing of short
6 form schedules for any particular month in place of the master
7 schedule. Short form schedules shall show all new items, price
8 changes or items discontinued since the last filing of a master
9 schedule. All schedules shall contain statements that the board
10 may permit or require.

11 (iv) Keep a detailed log of wholesale wine transactions,
12 including sales to the board, all licensees, United States Armed
13 Forces facilities and any other authorized purchaser under this
14 act.

15 (2) The wine wholesale licensee may sell and distribute more
16 than one brand of wine under the same license and shall provide
17 any contractual agreements between the wine wholesale licensee
18 and the ~~licensed~~ manufacturer to the board. <--

19 (3) The wine wholesale licensee may amend the list of brands
20 of wine it distributes to include additional brands of wine. The
21 following shall apply:

22 (i) For brands of wine that have not been sold by the board
23 at Pennsylvania Liquor Stores or through special liquor orders,
24 the wine wholesale licensee shall apply to the board for
25 permission to add that brand to the licensee's list of brands
26 permitted to be sold under the license.

27 (ii) For each new brand of wine, an application filing fee
28 of two thousand five hundred dollars (\$2,500) shall be submitted
29 with the application.

30 (4) The wine products shipped into this Commonwealth must be

1 delivered to the wine wholesale licensee's licensed premises.
2 Upon delivery, the products shall be unloaded, inventoried and
3 remain on the licensed premises for forty-eight hours before
4 delivery is made to a Pennsylvania Liquor Store, a licensee's
5 licensed premises or United States Armed Forces facilities.
6 During that time period, the board may inspect and inventory
7 warehouses. In the event that the forty-eight-hour hold period
8 may cause economic hardship to the wholesaler, board or
9 licensees, case-by-case exceptions may be requested by the
10 wholesaler or supplier and may be granted by the board.

11 (5) The wine wholesale licensee may not engage in conduct
12 that would constitute any of the following:

13 (i) Variable pricing.

14 (ii) Unfair or deceptive trade practices proscribed under
15 Federal or State law or regulation.

16 (iii) Intentional exclusion of competing brands of wine from
17 the marketplace.

18 (6) The wine wholesale licensee may only sell and distribute
19 those products in this Commonwealth that are subject to a
20 contractual relationship between the licensee and one or more
21 licensed manufacturers or suppliers of wine. <--

22 (7) A wine wholesale licensee shall remit to the Department
23 of Revenue all applicable taxes. A wine wholesale licensee shall
24 be considered a State Liquor Store for the purpose of collecting
25 and remitting taxes under Article II of the act of March 4, 1971
26 (P.L.6, No.2), known as the Tax Reform Code of 1971, for
27 products sold by licensees for on-premises consumption. The
28 emergency State tax imposed under the act of June 9, 1936 (1st
29 Sp.Sess., P.L.13, No.4), entitled "An act imposing an emergency
30 State tax on liquor, as herein defined, sold by the Pennsylvania

1 Liquor Control Board; providing for the collection and payment
2 of such tax; and imposing duties upon the Department of Revenue
3 and the Pennsylvania Liquor Control Board," shall be included in
4 the retail price of wine offered for sale by the wine wholesale
5 licensee. The tax may not be assessed at the point of sale to
6 consumers. The wine wholesale licensee shall be required to
7 remit the taxes to the Department of Revenue.

8 (8) No wine wholesale licensee under this section may hold a
9 license or permit to engage in any sales of wine at retail to
10 residents of this Commonwealth, and no licensee or permit holder
11 selling wine at retail in this Commonwealth may obtain a wine
12 wholesale license from the board. No wholesale license may be
13 issued to any wine manufacturer or producer.

14 (9) Any licensed importer that wishes to obtain a wine
15 wholesale license shall do all of the following:

16 (i) Notify the board in writing.

17 (ii) Pay the licensing fees specified under paragraph (10).

18 (iii) Provide a statement to the board indicating that the
19 licensed importer plans to continuously operate under the wine
20 wholesale license for the duration of the license. The license
21 shall be in effect from the date of issuance and shall be
22 renewed on an annual basis with the board unless suspended,
23 revoked or not renewed under this act.

24 (10) In addition to any other fees provided for under this
25 act, a licensed importer shall submit an initial fee equal to
26 ten per centum of the cost of goods sold with the application.
27 For purposes of this paragraph, "cost of goods sold" shall be
28 determined as the purchase price the board paid to the licensed
29 importer for wine sold by the board in the most recent twelve-
30 month period.

1 (11) A wine wholesale license shall be in effect unless
2 suspended, revoked or not renewed under this act. A wholesale
3 license in good standing shall be renewed every year as follows:

4 (i) Wine wholesale licenses issued under this section shall
5 be subject to renewal each year.

6 (ii) The application for renewal shall be submitted, on a
7 form prescribed by the board, at least thirty days prior to the
8 expiration of the wine wholesale license and shall include, at a
9 minimum, an update of the information contained in the initial
10 and prior renewal applications and the payment of any renewal
11 fee required under this section.

12 (iii) A renewal fee of five per centum of the wine wholesale
13 licensee's gross receipts shall be due upon application for the
14 renewal of a license. For the purposes of this subparagraph,
15 "gross receipts" shall be determined as the total of all sales
16 of wine made BY THE LICENSED IMPORTER to the board, all <--
17 licensees, United States Armed Forces facilities and any other
18 authorized purchaser under this act.

19 (iv) The board may revoke a wine wholesale license issued
20 under this section if it finds that the licensee or any of its
21 affiliates, executive officers, directors or general or limited
22 partners or persons holding a controlling interest in the
23 licensee:

24 (A) is in violation of any provision of this act;

25 (B) has furnished the board with false or misleading
26 information; or

27 (C) is no longer reputable or suitable for licensure.

28 (12) Any violation of this act or the board's regulations
29 for governing activity occurring under the authority of the wine
30 wholesale license may be the basis for any of the following:

1 (i) A fine, suspension or license revocation.
2 (ii) Nonrenewal of the license.
3 (iii) Other penalties authorized under section 471.
4 (13) The board shall have no authority to do any of the
5 following once wine wholesale licenses have been issued and
6 licensees have commenced providing wholesale wine products to
7 authorized purchasers:

8 (i) Determine what wine products may be sold in this
9 Commonwealth.

10 (ii) Set the price at which wine products may be sold at
11 wholesale or by retail licensees in this Commonwealth.

12 (iii) Sell wine products at wholesale to retail licensees or
13 any other authorized purchaser under this act.

14 (b) All fees paid to the board under this section shall be
15 deposited into the General Fund.

16 Section 417. Wine Retail License.--(a) The board shall
17 issue a wine retail license to a retail store upon application.

18 (b) Every applicant for a wine retail license shall file a
19 written application with the board in the form and containing
20 the information as the board shall from time to time prescribe.
21 The application shall contain and follow the requirements set
22 forth under section 403 and shall at a minimum contain the
23 following:

24 (1) a description of the retail store;

25 (2) a description of any alterations proposed to be made to
26 the retail store or any additional construction plans to be
27 undertaken after the approval by the board of the application
28 for a license; or

29 (3) proposed storage location.

30 (c) A wine retail license may be transferred under the

1 provisions and restrictions under section 404. Notwithstanding
2 any provision of law to the contrary, a wine retail license may
3 be transferred to another eligible person to be used at the same
4 licensed facility.

5 (d) In addition to any other fees provided for under this
6 act, an applicant shall be required to pay an initial
7 application fee in the amount of two hundred fifty thousand
8 dollars (\$250,000).

9 (e) A wine retail license is subject to renewal on an annual
10 basis. A renewal fee equal to two per centum of the wine retail
11 licensee's total gross receipts shall be due at the time the
12 renewal application is filed. For purposes of this paragraph,
13 "gross receipts" shall be determined as the total of all sales
14 of wine made to consumers for off-premises consumption in the
15 most recent twelve-month period.

16 (f) Every wine retail licensee may sell wine for off-
17 premises consumption from any location within its licensed
18 premises. The following shall apply:

19 (1) Products may be displayed on shelving units and systems
20 and in or on refrigerated cases and equipment, within the
21 discretion of the licensee, provided that the displays are not
22 designed to attract minors and that the manner and method of
23 display allows access by all customers, including the physically
24 handicapped.

25 (2) A wine retail licensee may store wine in a ~~noncontiguous~~<--
26 NONCONTIGUOUS area that is not accessible to the public provided <--
27 the storage areas are:

28 (i) locked at all times when not being accessed by the
29 licensees' employees;

30 (ii) not accessible to employees under eighteen years of

1 age; and

2 (iii) identified by dimensions and location on forms
3 submitted in advance to the board.

4 (g) A wine retail licensee shall be permitted to hold:

5 (1) Tastings at any location in the retail store, provided
6 the tastings are in compliance with the provisions and
7 regulations regarding tastings held on licensed premises.

8 (2) Educational classes, including cooking classes, how-to
9 classes and seminars regarding the proper or recommended use,
10 consumption, identification, pairing, appellation, aging,
11 storage, characteristics, service and presentation of the
12 alcohol products that a wine retail licensee offers for sale,
13 during which classes the incidental consumption of alcohol by
14 registered participants of lawful age shall be permitted. The
15 classes may be free of charge to participants or may be offered
16 at fee.

17 (h) Wine retail licensees may purchase wine under the
18 following requirements and restrictions:

19 (1) Wine retail licensees shall buy wine sold in accordance
20 with their wine retail license from the board, as long as the
21 board continues to operate as a wholesaler, a wine wholesale
22 licensee or a winery licensed under this act.

23 (2) All products purchased by wine retail licensees and all
24 products purchased by restaurant and eating place licensees
25 owned by the same individual or company must be separately
26 purchased. Separate records must be maintained for all purchases
27 and sales by all wine retail licensees and restaurant or eating
28 place licensees, whether or not located within the same building
29 or owned by the same individual or company.

30 (i) Nothing in this section shall affect the ability of an

1 existing licensee to operate within the scope of its current
2 license as authorized by this act.

3 (1) Wine retail licensees shall be permitted to hold
4 restaurant or eating place licenses issued for areas within the
5 same building for which the wine retail license has been issued
6 or for a different building. Wine retail licenses and restaurant
7 or eating place licenses issued for areas within the same retail
8 stores may be issued for areas that are adjacent, abutting and
9 contiguous, and the board shall approve interior connections
10 between the areas.

11 (2) Notwithstanding any other provision of law, a holder of
12 a wine expanded permit under section 415 may continue to operate
13 under the permit as authorized by this act. The permit holder
14 may allow for the purchase of wine for off-premises consumption
15 to be paid for at a point of sale other than a point of sale
16 located on the licensed premises. The purchase of wine may not
17 occur at a point of sale where the customer scans the customer's
18 own purchases.

19 (j) For purposes of selling wine for off-premises
20 consumption:

21 (1) A wine retail licensee may sell in a single transaction
22 up to nine thousand (9,000) milliliters of wine.

23 (2) A wine retail licensee may sell wine from seven o'clock
24 antemeridian until eleven o'clock postmeridian every day except
25 Sunday.

26 (3) A wine retail licensee may sell wine from nine o'clock
27 antemeridian until eleven o'clock postmeridian on Sundays upon
28 submission to the board of a Sunday sales permit application and
29 a fee of two thousand dollars (\$2,000) per year.

30 (4) A wine retail licensee shall comply with the responsible

1 alcohol management provisions under section 471.1.

2 (5) A wine retail licensee shall utilize a transaction scan
3 device to verify the age of an individual who appears to be
4 under thirty-five years of age before making a sale of wine. A
5 wine retail licensee may not sell or share data from the use of
6 a transaction scan device, except that the licensee may use the
7 data to show the enforcement bureau of the board that the
8 licensee is in compliance with this act. As used in this
9 paragraph, the term "transaction scan device" means a device
10 capable of deciphering, in an electronically readable format,
11 the information encoded on the magnetic strip or bar code of an
12 identification card under section 495(a).

13 (6) A sale of wine shall be made through a register which is
14 staffed by a sales clerk who is at least eighteen years of age
15 and has been trained under section 471.1 and which utilizes a
16 transaction scan device for the sale. The sale of wine may not
17 occur at a point of sale where the customer scans the customer's
18 own purchases.

19 (7) The sale of wine shall for off-premises consumption be
20 considered a "purchase at retail" under section 201(f) of the
21 Tax Reform Code of 1971, a "sale at retail" under section 201(k)
22 of the Tax Reform Code of 1971 or a "use" under section 201(o)
23 of the Tax Reform Code of 1971.

24 (k) A wine retail licensee is not subject to section 493(14)
25 for the purposes of selling liquor for off-premises consumption.

26 (L) A LICENSEE OR PERMIT HOLDER THAT SELLS WINE AND SPIRITS <--
27 FOR OFF-PREMISES CONSUMPTION MAY NOT REQUIRE A CUSTOMER TO
28 PURCHASE A MEMBERSHIP OR PAY A FEE TO PURCHASE WINE AND SPIRITS.

29 ~~(1)~~ (M) All fees paid to the board under this section shall <--
30 be deposited into the General Fund.

1 Section 3. This act shall take effect in 60 days.