

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1075 Session of 2017

INTRODUCED BY TURZAI, BERNSTINE, BLOOM, CUTLER, DOWLING, DUNBAR, EMRICK, GREINER, GROVE, A. HARRIS, HICKERNELL, IRVIN, JAMES, JOZWIAK, KAUFFMAN, LAWRENCE, MACKENZIE, MCGINNIS, MENTZER, MILLARD, MILNE, MUSTIO, ORTITAY, PICKETT, REESE, ROTHMAN, RYAN, SANKEY, SAYLOR, TOEPEL, TOPPER, WARD, WATSON AND WHEELAND, APRIL 7, 2017

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 7, 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; in
 18 licenses and regulations, liquor, alcohol and malt and brewed
 19 beverages, providing for wholesale permit and for wholesale
 20 licenses; and, in disposition of moneys collected under
 21 provisions of act, further providing for moneys paid into the
 22 State Stores Fund for use of the Commonwealth, providing for
 23 moneys paid into the State Stores Operating Fund for use of
 24 the board and establishing the State Stores Operating Fund.

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

27 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 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 "Spirits" shall mean any beverage which contains alcohol
8 obtained by distillation, mixed with water or other substance in
9 solution, and includes brandy, rum, whiskey, gin or other
10 spirituous liquors, and such liquors when rectified, blended or
11 otherwise mixed with alcohol or other substances.

12 * * *

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

14 Section 410.1. Wholesale Permit.--(a) Notwithstanding any
15 other provision of law, an importer licensed under this article
16 may make application to the board, on forms prescribed by the
17 board, for a wholesale permit for the purpose of selling and
18 distributing wholesale wine or spirits to the board, to
19 licensees and to United States Armed Forces facilities located
20 on United States Armed Forces installations within this
21 Commonwealth. Within thirty days of the effective date of this
22 section, the board shall accept applications, and the board
23 shall approve the issuance of a wholesale permit within sixty
24 days of receipt of the application if the applicant meets the
25 requirements under this section. An applicant shall submit the
26 initial permit fee with the application to the board. The
27 Department of Revenue shall audit retailers to determine whether
28 wholesale permit holders or licensees are remitting the tax
29 imposed under sections 415 and 416 and Article II of the act of
30 March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of

1 1971," for products sold for consumption on and off the
2 premises. The following shall apply:

3 (1) The wholesale permit holder shall:

4 (i) Provide to the board a list of the brands of wine and
5 spirits it will distribute.

6 (ii) Serve the board, all licensees, United States Armed
7 Forces facilities and any other authorized person permitted to
8 purchase and resell wine and spirits under this act and make
9 wine and spirits available for sale under the same pricing
10 structure.

11 (iii) Post prices with the board as follows:

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

14 (B) Schedules shall be filed on or before the twenty-fifth
15 day of each month and shall become effective on the first day of
16 the second succeeding calendar month. When the twenty-fifth day
17 of the month falls on a Saturday, Sunday or holiday, schedules
18 may be filed on the following business day.

19 (C) Amended schedules of prices shall be filed on a form and
20 in a manner as designated by the board no later than the
21 twentieth day of the month prior to the effective date of the
22 schedule being amended. When the twentieth day of the month
23 falls on a Saturday, Sunday or holiday, amended schedules may be
24 filed on the following business day.

25 (D) The schedules filed each month which contain a listing
26 of all brands of wine and spirits to be sold shall be known as
27 master schedules. The board may permit or require the filing of
28 short form schedules for any particular month in place of the
29 master schedule. Short form schedules shall show all new items,
30 price changes or items discontinued since the last filing of a

1 master schedule. All schedules shall contain statements that the
2 board may permit or require.

3 (iv) Keep a detailed log of wholesale wine and spirits
4 transactions, including sales to the board, all licensees,
5 United States Armed Forces facilities and any other authorized
6 purchaser under this act.

7 (2) The wholesale permit holder may sell and distribute more
8 than one brand of wine or spirits under the same permit and
9 shall provide any contractual agreements between the wholesale
10 permit holder and the licensed manufacturer to the board.

11 (3) The wholesale permit holder may amend the list of brands
12 of wine and spirits it distributes to include additional brands
13 of wine and spirits. The following shall apply:

14 (i) For brands of wine or spirits that have not been sold by
15 the board at Pennsylvania Liquor Stores or through special
16 liquor orders, a wholesale permit holder shall apply to the
17 board for permission to add that brand to the permit holder's
18 list of brands permitted to be sold under the permit.

19 (ii) For each new brand of liquor, an application filing fee
20 of two thousand five hundred dollars (\$2,500) shall be submitted
21 with the application.

22 (4) The wine and spirits products shipped into this
23 Commonwealth must be delivered to a wholesale permit holder's
24 licensed premises. Upon delivery, the products shall be
25 unloaded, inventoried and remain on the licensed premises for
26 forty-eight hours before delivery is made to a Pennsylvania
27 Liquor Store, a licensee's licensed premises or United States
28 Armed Forces facilities. During that time period, the board may
29 inspect and inventory importer warehouses. In the event that the
30 forty-eight hour hold period may cause economic hardship to the

1 wholesaler, board or licensees, case by case exceptions may be
2 requested by the wholesaler or supplier and may be granted by
3 the board.

4 (5) The wholesale permit holder may not engage in conduct
5 that would constitute any of the following:

6 (i) Variable pricing.

7 (ii) Unfair or deceptive trade practices proscribed under
8 Federal or State law or regulation.

9 (iii) Intentional exclusion of competing brands of wine or
10 spirits from the marketplace.

11 (6) The wholesale permit holder may only sell and distribute
12 those products in this Commonwealth that are subject to a
13 contractual relationship between the wholesale permit holder and
14 one or more licensed manufacturers or suppliers of wine or
15 spirits.

16 (7) A wholesale permit holder shall remit to the Department
17 of Revenue all applicable taxes. A wholesale permit holder shall
18 be considered a State Liquor Store for the purpose of collecting
19 and remitting taxes under Article II of the "Tax Reform Code of
20 1971" for products sold by licensees for on-premises
21 consumption.

22 (8) The emergency State tax imposed under the act of June 9,
23 1936 (1st Sp.Sess., P.L.13, No.4), entitled "An act imposing an
24 emergency State tax on liquor, as herein defined, sold by the
25 Pennsylvania Liquor Control Board; providing for the collection
26 and payment of such tax; and imposing duties upon the Department
27 of Revenue and the Pennsylvania Liquor Control Board," shall be
28 included in the retail price of wine or spirits offered for sale
29 by the wholesale permit holder. The tax may not be assessed at
30 the point of sale to consumers. The wholesale permit holder

1 shall be required to remit the taxes to the Department of
2 Revenue.

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

10 (10) A licensed importer that wishes to obtain a wholesale
11 permit shall do all of the following:

12 (i) Notify the board in writing.

13 (ii) Pay the permitting fees specified under clause (11).

14 (iii) Provide a statement to the board indicating that the
15 licensed importer plans to continuously operate under the
16 wholesale permit for the duration of the permit. The wholesale
17 permit shall be in effect for ten years from the date of
18 issuance and shall be renewed yearly with the board unless
19 suspended, revoked or not renewed under this act.

20 (11) Wholesale permit fees shall be as follows:

21 (i) A licensed importer shall submit an initial fee equal to
22 ten per centum of the cost of goods sold with the application.
23 For purposes of this subclause, "cost of goods sold" shall be
24 determined as the purchase price the board paid to the licensed
25 importer for products sold by the board in the most recent
26 twelve-month period.

27 (ii) A wholesale permit holder shall pay a renewal fee equal
28 to ten per centum of its gross receipts for each calendar
29 quarter upon commencement of its wholesale operations.

30 (iii) The renewal fee shall be due and payable on the

1 twentieth day of April, July, October and January. The permit
2 holder shall file a return and remit payment on the form as
3 prescribed by the board.

4 (iv) For purposes of this clause, gross receipts shall be
5 determined as the total of all sales of wine and spirits made to
6 the board, all licensees, United States Armed Forces facilities
7 and any other authorized purchaser.

8 (12) A violation of this act or the board's regulations for
9 governing activity occurring under the authority of the
10 wholesale permit may be the basis for any of the following:

11 (i) A fine, suspension or wholesale permit revocation.

12 (ii) Nonrenewal of the wholesale permit.

13 (iii) Other penalties authorized under section 471.

14 (13) The board shall have no authority to do any of the
15 following once wholesale permits have been issued and permit
16 holders have commenced providing wholesale products to licensees
17 and permit holders:

18 (i) Determine which wines or spirits products may be sold in
19 this Commonwealth.

20 (ii) Set the price at which products may be sold at
21 wholesale or retail in this Commonwealth.

22 (iii) Sell products at wholesale to retail licensees or any
23 other authorized purchaser under this act.

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

26 Section 410.2. Wholesale Licenses.--(a) At the conclusion
27 of the ten-year wholesale permit under section 410.1:

28 (1) The Commonwealth's wholesale wine and spirits system
29 shall be divested.

30 (2) The holder of a wholesale permit shall be granted a

1 wholesale license to continue operations and shall continue to
2 operate subject to the requirements of section 410.1 and
3 subsection (b).

4 (b) A wholesale license shall be in effect unless suspended,
5 revoked or not renewed under this act. A wholesale license in
6 good standing shall be renewed every year as follows:

7 (1) Wholesale licenses issued under this section shall be
8 subject to renewal every year.

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

15 (3) A renewal fee of five per centum of the wholesale
16 licensee's gross receipts shall be due upon application for the
17 renewal of a wine and spirits retail license. For the purposes
18 of this clause, gross receipts shall be determined as the total
19 of all sales of wine and spirits made to the board, all
20 licensees, United States Armed Forces facilities and any other
21 authorized purchaser.

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

27 (i) is in violation of a provision of this act;

28 (ii) has furnished the board with false or misleading
29 information; or

30 (iii) is no longer reputable or suitable for licensure.

1 (c) All fees paid to the board under this section shall be
2 deposited in the General Fund.

3 Section 3. Section 802(a) and (f) of the act are amended to
4 read:

5 Section 802. Moneys Paid Into The State Stores Fund for Use
6 of the Commonwealth.--(a) All moneys, except fees to be paid
7 into the Liquor License Fund as provided by section 801,
8 collected, received or recovered under the provisions of this
9 act for license fees, permit fees, filing fees and registration
10 fees, from forfeitures, sales of forfeited property[,] and
11 compromise penalties [and sales of liquor and alcohol at the
12 Pennsylvania Liquor Stores], shall be paid into the State
13 Treasury through the Department of Revenue into a special fund
14 to be known as "The State Stores Fund."

15 * * *

16 (f) Any moneys in the State Stores Fund or the State Stores
17 Operating Fund, from time to time, which may not be required for
18 any of the purposes specified in this act or in the act of
19 December 20, 1933 (Sp.Sess., P.L.89, No.15), entitled "An act
20 appropriating the moneys in The State Stores Fund," shall be
21 paid over into the General Fund and shall be available for the
22 payment of appropriations made from the General Fund. The
23 Pennsylvania Liquor Control Board, with the approval of the
24 Governor, shall, from time to time, fix the amount of money
25 which may be so paid over into the General Fund and by its
26 requisition shall direct the Department of the Auditor General
27 and the Treasury Department to transfer such moneys from the
28 State Stores Fund or the State Stores Operating Fund to the
29 General Fund. The Pennsylvania Liquor Control Board shall,
30 immediately upon voting to pay over any moneys from the State

1 Stores Fund or the State Stores Operating Fund to the General
2 Fund, notify the chairman and minority chairman of the
3 Appropriations Committee of the Senate and the chairman and
4 minority chairman of the Appropriations Committee of the House
5 of Representatives of such transfer of moneys.

6 * * *

7 Section 4. The act is amended by adding a section to read:

8 Section 802.1. State Stores Operating Fund.--(a) The State
9 Stores Operating Fund is established as a special fund in the
10 State Treasury. The fund shall not lapse.

11 (b) All moneys from the sales of liquor and alcohol at
12 Pennsylvania Liquor Stores, including any moneys above and
13 beyond the cost of product sold to licensees under section 415,
14 shall be paid into the State Treasury through the Department of
15 Revenue for deposit into the State Stores Operating Fund.

16 (c) The moneys in the State Stores Operating Fund shall be
17 used solely for operation of Pennsylvania Liquor Stores as
18 described in Article III.

19 (d) No funds shall be transferred into the State Stores
20 Operating Fund from any other source.

21 Section 5. This act shall take effect in 30 days.