

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1906 Session of 2021

INTRODUCED BY MERCURI, BERNSTINE, R. BROWN, GAYDOS, KERWIN,
MIHALEK, MILLARD, ROTHMAN, ROWE, ROZZI, RYAN, SMITH AND
WARNER, SEPTEMBER 27, 2021

REFERRED TO COMMITTEE ON LIQUOR CONTROL, SEPTEMBER 27, 2021

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An
2 act relating to alcoholic liquors, alcohol and malt and
3 brewed beverages; amending, revising, consolidating and
4 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 licenses and regulations and liquor, alcohol and malt and
18 brewed beverages, further providing for shipment of wine.

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

21 Section 1. Section 488 of the act of April 12, 1951 (P.L.90,
22 No.21), known as the Liquor Code, is amended by adding a
23 subsection to read:

24 Section 488. Shipment of Wine.--* * *

25 (m) Notwithstanding any other provision of law, a person

licensed by the board as a warehouse wine direct to consumer licensee, as provided under this subsection, may ship any wine offered for sale at wholesale by the board and available to the warehouse wine direct to consumer licensee from the board for sale at retail to any resident of this Commonwealth who is at least twenty-one (21) years of age for the resident's personal use and not for resale and in compliance with the provisions this subsection. The following shall apply:

(1) A warehouse wine direct to consumer licensee must purchase all wine for sale to residents of this Commonwealth from the board under the same terms and conditions of a wine expanded permit holder under section 415.

(2) Prior to issuing a warehouse wine direct to consumer license, the board shall require an applicant to:

(i) File an application with the board.

(ii) Pay a licensing fee of ten thousand dollars (\$10,000).

(iii) Provide the board with:

(A) a copy of the applicant's lease, deed or other written proof of occupancy for the applicant's proposed warehouse premises; and

(B) a diagram showing the floor plan for a warehouse premises that is at least forty thousand square feet in area and which, in addition to storage, contains an office space for the licensed business.

(iv) Provide documentation which evidences that the applicant has obtained a sales tax license from the Department of Revenue.

(v) Provide the board with any other information that the board deems necessary and appropriate.

(3) A warehouse wine direct to consumer licensee shall:

1 (i) Report to the board each year the total amount of wine
2 shipped to residents of this Commonwealth in the preceding
3 calendar year.

4 (ii) Permit the board, the enforcement bureau or the
5 Secretary of Revenue, or their designated representatives, to
6 enter and inspect the licensed premises and audit the warehouse
7 direct to consumer licensee records upon request.

8 (iii) Require proof of age of the recipient, in a manner or
9 format approved by the board for sale by direct wine shipper
10 licensees, before wine is shipped to a resident of this
11 Commonwealth.

12 (iv) Ensure that all boxes or exterior containers of wine
13 shipped directly to a resident of this Commonwealth are
14 conspicuously labeled with the words "CONTAINS ALCOHOL:
15 SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR
16 DELIVERY."

17 (v) Pay to the Department of Revenue all taxes due on sales
18 to residents of this Commonwealth. The wine delivered under this
19 subsection shall be subject to only the following:

20 (A) All warehouse direct to consumer licensees shall comply
21 with the provisions of section 201(f), (k) and (o) of the Tax
22 Reform Code of 1971, regarding the purchase of wine from a
23 Pennsylvania Liquor Store.

24 (B) The sale of wine by a warehouse direct to consumer
25 licensee shall be considered a "purchase at retail" under
26 section 201(f) of the Tax Reform Code of 1971, a "sale at
27 retail" under section 201(k) of the Tax Reform Code of 1971 or a
28 "use" under section 201(o) of the Tax Reform Code of 1971.

29 (C) A warehouse direct to consumer licensee may, when filing
30 its required returns under Article II of the Tax Reform Code of

1 1971, request a credit of any taxes paid in accordance with
2 paragraphs (1) and (2). The Department of Revenue may promulgate
3 rules or regulations and prescribe forms as may be necessary to
4 implement the provisions of this subsection.

5 (vi) Be prohibited from selling wine to a consumer located
6 in this Commonwealth at a price that is less than the warehouse
7 direct to consumer licensee's purchase price for the wine from
8 the board.

9 (vii) Be prohibited from selling any private label product.

10 (viii) Annually renew its license by paying a renewal fee of
11 one thousand dollars (\$1,000).

12 (ix) Be prohibited from selling wine to any person or entity
13 holding any license issued by the board for resale.

14 (x) Be prohibited from selling wine to any walk-in or in-
15 person consumer at its warehouse premises.

16 (xi) Ship only to account holders of the warehouse direct to
17 consumer licensee.

18 (xii) Not hold any other license or permit issued by the
19 board in the warehouse wine direct to consumer licensee's name
20 or in the name of any subsidiary or related entity, or in the
21 name of any principal, officer, director, member, manager,
22 shareholder or general or limited partner.

23 (xiii) Not have or create any interior connection, inside
24 passage or communication between the licensed warehouse direct
25 to consumer licensed premises and any other business, whether
26 licensed or not licensed.

27 (xiv) Apply for and hold only one warehouse direct to
28 consumer license for one location in this Commonwealth in the
29 warehouse wine direct to consumer licensee's name or in the name
30 of any subsidiary or related entity, or in the name of any

principal, officer, director, member, manager, shareholder or
general or limited partner.

(xv) Be prohibited from transferring its warehouse direct to
consumer license to any successor owner of the licensed business
and any successor shall be required to obtain a new warehouse
direct to consumer license.

(xvi) Be prohibited from selling any product other than wine
and wine gift baskets, including foodstuffs contained in wine
gift baskets, wine-related glassware, wine bottle openers and
other items ancillary to the sale and consumption of wine.

(xvii) Not be required to obtain a bailee for hire permit
for its warehouse premises, nor a transporter for hire permit
for vehicles used by the warehouse wine direct to consumer
licensee to transport wine to and from a board warehouse and the
warehouse direct to consumer licensee's licensed warehouse
premises. The privileges of other permits shall be included in
the warehouse direct to consumer license.

(xviii) Ship wine to unlicensed retail customers in this
Commonwealth only by way of a common carrier and may not ship
wine to purchasers in any vehicle owned or leased by the
warehouse wine direct to consumer licensee in its own name or in
the name of any subsidiary or related entity, or in the name of
any principal, officer, director, member, manager, shareholder
or general or limited partner of the licensee, and the common
carrier shall be contractually obligated to the warehouse direct
to consumer licensee to check the recipient's identification and
proof of age prior to delivery and refrain from delivering a
package if no person of demonstrated proper age is present to
receive the package.

(4) Any person who resells wine obtained under this section

commits a misdemeanor of the second degree. A person convicted of selling or offering to sell any wine in violation of this section shall, in addition to any other penalty prescribed by law, be sentenced to pay a fine of four dollars (\$4) per fluid ounce for each container of wine found on the premises where the sale was made or attempted. The amount of fine per container shall be based on the capacity of the container when full, whether or not it is full at the time of sale or attempted sale. All wine found on the premises shall be confiscated.

(5) The board may promulgate rules and regulations necessary to implement and enforce the provisions of this section.

(6) The board shall submit annual reports to the Appropriations Committee of the Senate, the Law and Justice Committee of the Senate, the Appropriations Committee of the House of Representatives and the Liquor Control Committee of the House of Representatives summarizing the number of warehouse wine direct to consumer licenses issued by the board and the quantity of wine sold by warehouse wine direct to consumer licensee pursuant to this section.

(7) Receipts from the tax under this section shall be deposited into the General Fund.

(8) Deliveries made under this section shall only be made by common carriers holding transporter for hire permits. The warehouse wine direct to consumer licensee and common carrier with a transporter for hire permit which makes deliveries under this section shall:

(i) keep records as required under section 512, as required for the direct shipment of wine; and

(ii) permit the board and the enforcement bureau, or their designated representatives, to inspect the records under section

1 513.

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