

PENNSYLVANIA STATE POLICE

STATEMENT TO HOUSE LIQUOR CONTROL
COMMITTEE REGARDING HOUSE BILL 41

JUNE 26, 2023



Good morning, Chairman Deasy, Chairwoman Fee, and members of the House Liquor Control Committee. I am Major Christopher Neal, Director of the Bureau of Liquor Control Enforcement (BLCE). On behalf of the Commissioner of the State Police, I thank you for the opportunity to provide written remarks regarding House Bill 41.

The proposed legislation would, among other things, create a new class of transporter-for-hire license (“Class D”) that may accept orders on behalf of licensees and permit holders (as well as the Pennsylvania Liquor Control Board), who are authorized to sell alcohol for off-premises consumption, for delivery to unlicensed customers. We appreciate the opportunity to share our concerns with you in advance of any action you may decide to take on this measure.

While the legislation contains certain procedural safeguards intended to guard against the possibility that a licensed transporter-for-hire will deliver alcohol to minors, compliance depends wholly on whether delivery personnel used in the service of such licensees follow through and exercise due diligence. The measure requires that all delivery personnel of a licensed transporter undergo server/seller RAMP training, which includes training on spotting fake IDs, requires that licensed transporters require proof of age of the recipient and, in the case of delivery of wine, use a transaction scan device to verify the age of the customer prior to delivery.

We have found that counterfeit IDs, many of which originate from foreign countries, are becoming harder to discern from legitimate ones, and the majority of licensees, including those who possess Wine Expanded Permits

(WEPs), after running an ID through a scanner and getting a “valid” result, do not attempt to determine if the ID picture and listed characteristics match those of the individual presenting the ID, nor do they challenge a purported age. While many licensees believe all they need to do is swipe an ID, they must rely upon the result “in good faith” in order to successfully defend against a citation for selling or furnishing to minors.

The fact is minors know that their chance of obtaining alcohol through online sales and delivery is much higher and there is less of a likelihood of getting caught than if they physically walked into a convenience store, bar or distributor and presented an ID for examination and scanning. Unlike a face-to-face transaction within a licensed establishment where the employee can assess the physical characteristics of the purchaser before making the

sale and handing off possession of the alcohol, this assessment cannot be made with on-line purchases and the licensee is restricted by information supplied by the purchaser. Further, for the transporter-for-hire, since the sale has already been consummated, the job is simply to make the delivery and get to the next scheduled delivery location; having to return product because of a failed scan or having to come back for another attempt to obtain an adult signature is less than optimal and results in delivery delays, additional labor and costs (e.g., fuel).

It may be helpful to illustrate with a few examples from recent investigations:

- A complaint was made that a common carrier dropped off a wine delivery to a neighbor's residence, but the delivery person left the package, labeled as containing wine, with the neighbor's 15-year-old daughter. It was

determined that a named adult was listed to accept delivery of the wine at the time of delivery, but when the driver arrived, the minor answering the door advised him that this individual was coming out of the shower and could not come to the door. The driver then put that adult's name on the signature pad, scribbled a signature, and left the wine with the minor.

- The Bureau investigated a licensee which held a WEP and a transporter-for-hire license. Through a website, the licensee sold wine for delivery on six separate occasions to undercover Liquor Enforcement Officers (LEOs). For all on-line sales, the LEOs were only required to check a box verifying that they were at least 21 years old (no ID, date of birth, or proof of age was required at the time of sale). For each of the transactions, a credit card issued in one name was used, while the person listed as the recipient of the

delivery was a different person. On one occasion, the delivery person looked at the ID of the recipient without scanning it. On another occasion, the delivery person scanned the back of the ID without looking at the front of the ID at all. Another time, the delivery person never even asked for an ID, let alone scan one. Again, in these situations, a different person was listed for receiving the wine than who had purchased it.

It is important to note that last month, the Massachusetts Alcoholic Beverages Commission revoked the retail package store license held by GB LL Holdings MA LLC d/b/a GoPuff. As you likely know, GoPuff delivers alcohol in many states, including Pennsylvania. The Commission decided to revoke GoPuff's license after an investigation revealed that its delivery personnel had delivered alcohol to 19 minors on five separate dates of

investigation in late 2021. What is perhaps the most eye-opening aspect of that case is that investigators notified GoPuff's manager after the first instance of sales/delivery to a minor, and again after each subsequent sale/delivery, but despite each notification no action was apparently taken to prevent the next transaction involving a minor.

This highlights another serious concern. Even if violations are promptly brought to the Bureau's attention and enforcement action is taken against a WEP holder or transporter-for-hire licensee through the citation process, it would likely be several months to a year or so before the matter is adjudicated after a hearing and a penalty is assessed (let alone appeals decided). In the meantime, the Bureau would not have the authority to stop the licensee's ongoing deliveries, even if a pattern of delivering to minors

is discerned and the licensee is put on notice of the violations.

Further, without significant penalties for violations when they are uncovered, most licensees will likely view any potential penalty that may result as merely the cost of doing business. Act 14 of 1987 created the fine structure associated with violations of the Liquor Code (\$50 to \$1,000 for most violations, and \$1,000 to \$5,000 for major violations, including sales/furnishing to minors), and it remains in effect today. It should go without saying (given the rate of inflation) that the deterrent effect of a \$1,000 fine in 2023 is significantly less than a fine of the same amount in 1987. You may therefore want to consider a different penalty structure for these types of violations, or perhaps graduated penalties in which repeated violations may result

in an automatic suspension of privileges, to have a meaningful deterrent effect.

While we do not frequently get complaints involving the delivery of alcohol to a minor, we do follow up and investigate such incidents, and the Bureau tries to proactively investigate deliveries of alcohol, but this is not always possible due to personnel constraints. As with the first bulleted example, absent a complainant, the Bureau would have had no reason to suspect a violation because the carrier's personnel signed on behalf of an adult indicating that the wine was delivered to and accepted by that individual. Undercover investigations are possible, as indicated by the second example, but they take time and personnel to do correctly and thoroughly. Prior to this year, the Bureau had been authorized to use minors in compliance checks at licensed establishments, an

enforcement tool that proved invaluable in uncovering sales to minors by licensees and bringing licensees into compliance (similar programs are authorized in other states). However, the statutory provision related to this program has expired and the Bureau is no longer able to utilize this enforcement tool, which could be very useful in these types of investigations if the General Assembly decides to proceed.

Thank you for the opportunity to provide remarks on this proposed legislation. The PSP and the BLCE remains committed to providing professional public safety services to the residents and visitors of this Commonwealth.