

Comments on House Bill 41 (P.N. 30) and Transporters-for-Hire

Good morning,

My name is Rodrigo Diaz and I am the Chief Counsel for the Pennsylvania Liquor Control Board (PLCB). I have been asked to provide some history on the issue of the commercial transportation of alcohol in Pennsylvania as well as House Bill No. 41 (P.N. 30).

Before proceeding any further, I do want to point out that my agency does not generally take positions on pending legislation. The PLCB is a legislative creation and we simply attempt to comply with the requirements imposed on us by the Liquor Code. My comments should therefore not be construed as in support for or in opposition to any particular bill but rather technical in nature.

The commercial transportation of alcohol - in other words, the transportation of alcohol by a third party for a fee - is not a new or novel concept. The Board currently has approximately 562 active transporter-for-hire licenses. A transporter-for-hire Class A license allows for the commercial transportation of liquor, malt or brewed beverages, or alcohol to or from points located in the Commonwealth. A transporter-for-hire Class B license allows for the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. A transporter-for-hire Class C license is a fleet license that authorizes the holder to engage in the commercial transportation of liquor parcels within the Commonwealth. Many of these licensees, however, deliver the product to licensees that in turn resell the product to their customers. Other licenses, such as beer distributors, wineries and distilleries may transport alcohol to their customers as part of the inherent privilege of their license.

What has changed over the years is the creation of a market for the delivery of alcohol to non-licensees by a third party. Oftentimes this delivery is part of a broader delivery service.

In Pennsylvania, delivery of a third party's alcohol to a non-licensee by a licensed transporter can be legally difficult. Since the transporter does not own the alcohol in question, it cannot simply buy the alcohol for the customer and then resell it when it delivers it, since that could be construed as a sale of alcohol without the

appropriate license. Were it otherwise, a restaurant without a restaurant liquor license would be able to acquire a transporter license, make purchases at a Fine Wine & Good Spirits store or beer distributor, provide their customers eating at their restaurant with a list of those products and then charge a fee for the “delivery” of the alcohol.

That being said, the legislature can certainly create a transporter license – for those businesses that are truly in the business of transporting alcohol – that would make it easier for those businesses to operate.

House Bill 41 appears to be a viable way of addressing the issue, but the language does raise some questions that you may wish to clarify –

- The language on page 3, lines 3 through 12 creates an exception to the need for a transporter-for-hire license if the person delivering the alcohol works for a licensee or a transporter-for-hire licensee, the alcohol has already been paid for and the delivery is to a vehicle parked in close proximity to the licensed premises. Since the scenario requires the person delivering the alcohol to be employed by a licensee, it’s not clear where the exemption comes into play i.e., the section seems to be saying in part that you are exempt from transporter-for-hire license if you work for someone with a transporter-for-hire license.
- On page 4, line 21, there is a reference to orders being placed on web-based platforms owned and operated by a licensee, a transporter-for-hire or a third party. The reference to a third party, presumably unlicensed, could create the possibility that an entity that otherwise would not be eligible for a liquor license could nonetheless enter into the marketplace by accepting and processing alcohol sales and then having them fulfilled and delivered through licensed entities it hires for those purposes.
- Page 4, lines 23-28 create a large exception to any requirement the Board may wish to impose regarding sales to minors. It does so by stating certain sales will not require presentation of identification, and it is unclear why this is so.
- While most alcohol sales may not be for credit, page 5 allows the transporter-for-hire to transfer payment for alcohol it delivered “in the normal course of business” without defining that term.

- You may wish to consider requiring packages containing alcohol to have conspicuous warning labels indicating their contents.
- Page 6, line 12 indicates that a transporter-for-hire employees and agents “qualify” as servers. Does that mean that they are subject to the mandatory training required of alcohol service personnel?
- You may wish to consider license revocation/ineligibility for a transporter-for-hire which repeatedly delivers alcohol to a minor.

That said, I am happy to try to answer any questions you may have.