

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2186 Session of
2001

INTRODUCED BY REINARD, DONATUCCI, FLICK AND MAYERNIK,
NOVEMBER 26, 2001

REFERRED TO COMMITTEE ON LIQUOR CONTROL, NOVEMBER 26, 2001

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,"
17 further providing for definitions and for when sales may be
18 made at Pennsylvania liquor stores; providing for the
19 shipment of wine; further providing for unlawful acts
20 relative to liquor, alcohol and liquor licenses; and
21 providing for a penalty.

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

24 Section 1. Section 102 of the act of April 12, 1951 (P.L.90,
25 No.21), known as the Liquor Code, reenacted and amended June 29,
26 1987 (P.L.32, No.14), is amended by adding a definition to read:

27 Section 102. Definitions.--The following words or phrases,

1 unless the context clearly indicates otherwise, shall have the
2 meanings ascribed to them in this section:

3 * * *

4 "Direct shipper" shall mean a person outside this
5 Commonwealth who obtains a license from the board to accept
6 orders placed for wine from within this Commonwealth by the
7 Internet and who ships or facilitates in any way shipment of
8 wine by a delivery agent or common carrier to a Pennsylvania
9 liquor store.

10 * * *

11 Section 2. Section 304 of the act is amended to read:

12 Section 304. When Sales May Be Made at Pennsylvania Liquor
13 Stores.--[Every] (a) Except as provided for in subsection (b),
14 every Pennsylvania Liquor Store shall be open for business week
15 days, except legal holidays or any day on which a general,
16 municipal, special or primary election is being held, during
17 such hours as the board, in its discretion, shall determine:
18 Provided, That the Pennsylvania Liquor Stores in the case of a
19 special election for members of the General Assembly or members
20 of the Congress of the United States, when such special election
21 is held on other than a primary, municipal or general election
22 day, shall be open in those Legislative or Congressional
23 Districts as though the day were not a special election day. The
24 board may, with the approval of the Governor, temporarily close
25 any store in any municipality.

26 (b) Pennsylvania Liquor Stores designated as specialty
27 stores operated by the board shall be open for Sunday retail
28 sales between the hours of noon and five o'clock postmeridian,
29 except that no Sunday sales shall occur on Easter Sunday or
30 Christmas day.

Section 3. Article IV of the act is amended by adding a subdivision to read:

(C.1) Shipment of Wine.

Section 488. Shipment of Wine into Commonwealth.--(a) The shipment of wine from out-of-State to residents of this Commonwealth is prohibited, except as otherwise provided for in this section.

(b) Notwithstanding any other provision of this act or law to the contrary, a person licensed by another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine and who obtains a direct wine shipper license as provided for in this section may ship up to nine liters per month of any wine on the Internet order of any resident of this Commonwealth who is at least twenty-one years of age for such resident's personal use and not for resale.

(c) An out-of-State wine shipper shall:

(1) Not ship more than nine liters per month on the Internet order of any person in this Commonwealth.

(2) Not ship to any address in a municipality that has adopted a local option referendum under section 472.

(3) Report to the board each year the total of wine shipped into this Commonwealth in the preceding calendar year.

(4) Permit the board or the Secretary of Revenue, or their designated representatives, to perform an audit of the out-of-State wine shipper's records upon request.

(5) Be deemed to have submitted to the jurisdiction of the board, any other State agency and the courts of this Commonwealth for purposes of enforcement of this section and any related laws, rules or regulations.

(d) A direct shipper may ship wine on the Internet order of

1 a resident into this Commonwealth provided that the wine is
2 shipped to a Pennsylvania Liquor Store selected by the resident
3 and the resident pays all taxes due on the wine at the time the
4 wine is picked up.

5 (e) A person shall sign an affidavit provided by the
6 Pennsylvania Liquor Store where the wine was delivered to
7 stating that the wine will only be used for the person's
8 personal use. Any person who resells wine obtained under this
9 section commits a misdemeanor of the second degree.

10 (f) The board may promulgate such rules and regulations as
11 are necessary to implement and enforce the provisions of this
12 section.

13 (g) The term "wine" as used in this section shall mean
14 liquor which is fermented from grapes and other fruits, having
15 alcoholic content of twenty-four per centum or less. The term
16 "wine" shall not include malt or brewed beverages, nor shall
17 wine include any products containing alcohol derived from malt,
18 grain, cereal, molasses or cactus.

19 Section 4. Sections 491(2), (3), (4), (8) and (11) of the
20 act are amended to read:

21 Section 491. Unlawful Acts Relative to Liquor, Alcohol and
22 Liquor Licensees.--

23 It shall be unlawful--

24 * * *

25 (2) Possession or Transportation of Liquor or Alcohol. For
26 any person, except a manufacturer or the board or the holder of
27 a sacramental wine license or of an importer's license, to
28 possess or transport any liquor or alcohol within this
29 Commonwealth which was not lawfully acquired prior to January
30 first, one thousand nine hundred and thirty-four, or has not

1 been purchased from a Pennsylvania Liquor Store or a licensed
2 limited winery in Pennsylvania, except [miniatures totalling
3 less than one gallon purchased by a collector of the same in
4 another state or foreign country, or] in accordance with section
5 488 or the board's regulations. The burden shall be upon the
6 person possessing or transporting such liquor or alcohol to
7 prove that it was so acquired. But nothing herein contained
8 shall prohibit the manufacture or possession of wine by any
9 person in his home for consumption of himself, his family and
10 guests and not for sale, not exceeding, during any one calendar
11 year, two hundred gallons, any other law to the contrary
12 notwithstanding. Such wine shall not be manufactured, possessed,
13 offered for sale or sold on any licensed premises.

14 [None of the provisions herein contained shall prohibit nor
15 shall it be unlawful for any person to import into Pennsylvania,
16 transport or have in his possession, an amount of liquor not
17 exceeding one gallon in volume upon which a State tax has not
18 been paid, if it can be shown to the satisfaction of the board
19 that such person purchased the liquor in a foreign country or
20 United States territory and was allowed to bring it into the
21 United States. Neither shall the provisions contained herein
22 prohibit nor make it unlawful for (i) any member of the armed
23 forces on active duty, or (ii) any retired member of the armed
24 forces, or (iii) any totally disabled veteran, or (iv) the
25 spouse of any person included in the foregoing classes of
26 persons to import into Pennsylvania, transport or have in his
27 possession an amount of liquor not exceeding one gallon per
28 month in volume upon which the State tax has not been paid, so
29 long as such liquor has been lawfully purchased from a package
30 store established and maintained under the authority of the

1 United States and is in containers identified in accordance with
2 regulations issued by the Department of Defense. Such liquor
3 shall not be possessed, offered for sale or sold on any licensed
4 premises.

5 None of the provisions herein contained shall prohibit nor
6 shall it be unlawful for any consul general, consul or other
7 diplomatic officer of a foreign government to import into
8 Pennsylvania, transport or have in his possession liquor upon
9 which a State tax has not been paid, if it can be shown to the
10 satisfaction of the board that such person acquired the liquor
11 in a foreign country and was allowed to bring it into the United
12 States. Such liquor shall not be possessed, offered for sale or
13 sold on any licensed premises.] Nothing in this act shall be
14 construed to prohibit any person from possessing or transporting
15 within this Commonwealth any wine in an amount not to exceed one
16 hundred twenty-eight ounces not purchased in this Commonwealth
17 for such person's exclusive personal consumption and not for
18 resale.

19 Any person violating the provisions of this clause for a
20 first offense involving the possession or transportation in
21 Pennsylvania of any liquor in a package (bottle or other
22 receptacle) or wine not purchased from a Pennsylvania Liquor
23 Store or from a licensed limited winery in Pennsylvania, with
24 respect to which satisfactory proof is produced that the
25 required Federal tax has been paid and which was purchased,
26 procured or acquired legally outside of Pennsylvania shall upon
27 conviction thereof in a summary proceeding be sentenced to pay a
28 fine of twenty-five dollars (\$25) for each such package, plus
29 costs of prosecution, or undergo imprisonment for a term not
30 exceeding ninety (90) days. Each full quart or major fraction

1 thereof shall be considered a separate package (bottle or other
2 receptacle) for the purposes of this clause. Such packages of
3 liquor shall be forfeited to the Commonwealth in the manner
4 prescribed in Article VI of this act but the vehicle, boat,
5 vessel, animal or aircraft used in the illegal transportation of
6 such packages shall not be subject to forfeiture: Provided,
7 however, That if it is a second or subsequent offense or if it
8 is established that the illegal possession or transportation was
9 in connection with a commercial transaction, then the other
10 provisions of this act providing for prosecution as a
11 misdemeanor and for the forfeiture of the vehicle, boat, vessel,
12 animal or aircraft shall apply.

13 (3) Purchase of Liquor or Alcohol. For any person within
14 this Commonwealth, by himself or by an employe or agent, to
15 attempt to purchase, or directly or indirectly, or upon any
16 pretense or device whatsoever, to purchase any liquor or alcohol
17 from any person or source other than a Pennsylvania Liquor
18 Store, except in accordance with the provisions of this act or
19 the regulations of the board. This act shall not be construed to
20 prohibit any person from purchasing any wine in an amount not to
21 exceed one hundred twenty-eight ounces outside of this
22 Commonwealth for such person's exclusive personal consumption
23 and not for resale.

24 [(4) Possession and Use of Decanters. For any person to use
25 decanters of alcoholic beverages except that the use of
26 decanters or other similar receptacles by licensees shall be
27 permitted in the case of wines and then only in accordance with
28 the regulations of the board, but nothing herein contained shall
29 prohibit the manufacture and possession of wine as provided in
30 clause (2) of this section.]

1 * * *

2 (8) Importation and Sales of Alcohol. For any person, to
3 import alcohol into this Commonwealth, or to sell alcohol to any
4 person, except in accordance with section 488 and the
5 regulations of the board. This act shall not be construed to
6 prohibit any person from importing wine in an amount not to
7 exceed one hundred twenty-eight ounces into this Commonwealth
8 for such person's exclusive personal consumption and not for
9 resale.

10 * * *

11 (11) Importation of Liquor. For any person, other than the
12 board or the holder of a sacramental wine license [or of], an
13 importer's license or a direct shipper's license, to import any
14 liquor whatsoever into this Commonwealth, but this section shall
15 not be construed to prohibit railroad and pullman companies from
16 selling liquors purchased outside the Commonwealth in their
17 dining, club and buffet cars which are covered by public service
18 liquor licenses and which are operated in this Commonwealth.
19 This act shall also not be construed to prohibit any person from
20 importing wine in an amount not to exceed one hundred twenty-
21 eight ounces into this Commonwealth for such person's exclusive
22 personal consumption and not for resale.

23 * * *

24 Section 5. The amendment of section 304 of the act shall
25 take effect upon entrance of the Commonwealth and the four
26 unions representing Pennsylvania liquor store employees into new
27 collective bargaining agreements.

28 Section 6. This act shall take effect in 60 days.