
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 161

Session of
1981

INTRODUCED BY MAIALE, HOFFEL, KUKOVICH, MICHLOVIC, MERRY,
ALDEN, POTT AND JACKSON, JANUARY 26, 1981

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JANUARY 26, 1981

AN ACT

1 Establishing the Commission of Licensure, Sales and Divestiture,
2 providing for powers and duties of the commission; granting
3 certain authority to the Liquor Control Board and to the
4 Department of General Services; establishing penalties and
5 making an appropriation.

6 Intention of Legislature. It is the purpose of this act to
7 promote a free market system in the economy of this Commonwealth
8 by eliminating all State proprietary interest in the marketing
9 of liquor products. This divestiture of the Pennsylvania Liquor
10 Store system shall be in an orderly and economically
11 nondisruptive manner and is designed to:

12 (1) lower prices to the consumer;

13 (2) provide a wide variety of liquor products to the
14 consumer;

15 (3) maintain the employment of current Pennsylvania
16 Liquor Store employees;

17 (4) maintain an adequate flow of revenue to the
18 Commonwealth from the taxation of the sale of liquor
19 products; and

1 (5) create new jobs in the private economic sector of
2 this Commonwealth so as to reduce unemployment.

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10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 CHAPTER 1

13 GENERAL PROVISIONS

14 Section 101. Short title.

15 This act shall be known and may be cited as the "Liquor Store
16 Divestiture Act."

17 Section 102. Definitions.

18 The following words and phrases when used in this act shall
19 have, unless the context clearly indicates otherwise, the
20 meanings give to them in this section:

21 "Commission." The Commission of Licensure, Sales and
22 Divestiture.

23 "Divestiture." The date on which all State proprietary
24 interest in the sale of liquor at a particular store shall end.

25 "Sales date." The date one year from the effective date of
26 this act.

27 "Store." Any Pennsylvania Liquor Store in the Commonwealth.

28 CHAPTER 3

29 COMMISSION OF LICENSURE, SALES AND DIVESTITURE

30 Section 301. Establishment, composition, etc.

1 (a) Establishment.--There is hereby established a temporary,
2 independent commission to be known as the Commission of
3 Licensure, Sales and Divestiture.

4 (b) Composition.--The commission shall consist of the
5 chairman of the Liquor Control Board, the Secretary of General
6 Services and a nominee of the Governor.

7 (c) Powers and duties in general.--The commission shall have
8 the power and its duties shall be to divest the Pennsylvania
9 Liquor Store systems of its retail operations, and otherwise to
10 administer and carry out the provisions of this act.

11 (d) Expiration.--The commission and all of its powers and
12 duties shall expire three years following the effective date of
13 this act.

14 Section 302. Personnel.

15 The commission shall have the power to utilize the services
16 of existing State employees now employed by the Liquor Control
17 Board, the Department of General Services and the Department of
18 Justice. The commission shall also have the power to employ a
19 director and such additional legal, professional, technical,
20 clerical, accounting and other assistants as may be deemed
21 necessary by the commission. Such additional employees shall be
22 informed by the commission that their employment will be only
23 for the duration of the commission.

24 Section 303. Powers and duties.

25 The commission shall be charged with the enforcement and
26 administration of this act. The duties of the commission shall
27 include, but not be limited to the following:

28 (1) Prepare bids, specifications and prospecti for store
29 licenses.

30 (2) Prepare inventories of the stores to be sold.

- 1 (3) Research the qualifications of the bidders.
- 2 (4) Advertise the nature and time of the sales.
- 3 (5) Determine minimum sales price for each store.
- 4 (6) Advertise bids per legal requirements.
- 5 (7) Sell the goodwill and the liquor stocked in the
- 6 Pennsylvania Liquor Stores.
- 7 (8) Sell remaining personalty after divestment of
- 8 marketable stores.
- 9 (9) Request from any department or agency of State
- 10 Government such information as it deems pertinent.
- 11 (10) Promulgate rules and regulations in order to
- 12 facilitate the expeditious and orderly accomplishment of the
- 13 aforementioned duties of the commission.

14 CHAPTER 5

15 DIVESTITURE PROCEDURE

16 Section 501. Determination of minimum bid.

17 During the 12-month period following the effective date of
18 this act the commission shall perform the following functions:

- 19 (1) Determine a minimum acceptable bid for each
- 20 Pennsylvania Liquor Store based upon, but not limited to, the
- 21 following factors:
 - 22 (i) The dollar amount of liquor on hand and the
 - 23 estimated dollar amount of liquor likely to be on hand at
 - 24 divestiture.
 - 25 (ii) Goodwill.
 - 26 (iii) Personalty such as cash registers, shelving,
 - 27 counters, office machines, tables, chairs, desks,
 - 28 janitorial equipment, conveyor belts and other
 - 29 miscellaneous personalty.
 - 30 (iv) Location.

1 (v) Past and expected earnings of the store.

2 (vi) Sales volume.

3 (2) Divide the Pennsylvania Liquor Stores into five
4 groups of approximately 150 stores each for the purpose of
5 transferring ownership of the stores intermittently over a
6 period of 16 months from the sales date. The selection of
7 stores to be placed in each group will be made so as to
8 ensure the availability of liquor to the consumer during the
9 transition period, and shall be based upon such factors as
10 proximity to other retail stores, sales volume, number of
11 employees and geographic location. Divestiture for five
12 groups of stores shall be according to the following
13 schedule:

14 Group A. Four months after the sales date.

15 Group B. Seven months after the sales date.

16 Group C. Ten months after the sales date.

17 Group D. Thirteen months after the sales date.

18 Group E. Sixteen months after the sales date.

19 (3) Prepare a detailed sales prospectus for each store
20 which shall state the minimum sales price of the store, date
21 of divestiture, location, number of employees, sales volume,
22 details of the current store lease, dollar amount of liquor
23 on hand at least inventory, estimated dollar amount of liquor
24 on hand at divestiture, list of personalty titled in the
25 Commonwealth, list of rented, leased or other property not
26 titled in the Commonwealth, and such other information as the
27 commission shall deem necessary.

28 Section 502. Advertising and publicity.

29 (a) Public information.--As soon after the effective date of
30 this act as is practical the commission shall conduct an

1 organized and systematic publicity program to inform the public
2 of this Commonwealth and others outside the Commonwealth of the
3 facts surrounding the sales as contemplated herein. This
4 advertising shall be in addition to the legal requirements of
5 the advertisement for bids as set forth below. The commission
6 may use whatever means it finds appropriate to inform the public
7 of the sale, including but not limited to, newspaper
8 advertisements, radio and television announcements, magazine
9 advertisements, and such other means as the commission shall
10 determine. Such advertisements need not be restricted to
11 publication within this Commonwealth.

12 (b) Invitations to bid.--Beginning nine months after the
13 effective date of this act the commission shall commence
14 advertisement of invitation to bid as specified herein.

15 (1) These advertisements shall be inserted at least
16 three times in not less than ten nor more than 15 newspapers
17 of large general circulation in different parts of the
18 Commonwealth. The first and last publication of any such
19 advertisement shall be at least 30 days apart and the
20 commission shall not advertise hereunder in more than three
21 newspapers in the county.

22 (2) The content of the advertisement specified herein
23 shall include the minimum sales price of the store, its group
24 letter and date of divestiture. The advertisement shall state
25 the dates, times and places where the bids are to be
26 submitted and opened. The advertisement shall give a brief
27 statement as to the terms and conditions of the contracts
28 which the bidder will be obligated to assume with the liquor
29 store employees union. The advertisement shall also include a
30 statement that the complete terms and conditions of the sale

1 of each store are contained in prospecti issued by and
2 available from the commission.

3 (3) Such legal notice shall specify and this act hereby
4 requires that all bids be accompanied by certified or bank
5 check or bid bonds for 10% of the amount of the bid.

6 Section 503. Bid process.

7 (a) Qualifications of bidders.--

8 (1) In addition to meeting all other qualifications of a
9 retail licensee under this act, the bidder shall:

10 (i) furnish the Liquor Control Board with
11 information relative to his financial status, experience
12 in business, prior employment in the liquor industry as
13 well as a detailed financial history including records of
14 any bankruptcies, and a statement of criminal
15 convictions; and

16 (ii) file with the Liquor Control Board an
17 application for a retail licensure.

18 (2) This information shall be verified by affirmations
19 attached to the bid and to the application. The Liquor
20 Control Board may consider the information contained in the
21 bidder's statement in determining who is a qualified bidder
22 under the terms of this act. The terms of this section shall
23 apply to every individual natural person who is a bidder as
24 well as to his partners and associates. If the bidder is a
25 corporation, it shall furnish its articles of incorporation,
26 its certificate for doing business in this Commonwealth and
27 such other information as the Liquor Control Board may
28 require, including statements as to qualifications of the
29 significant stockholders, officers or board of directors as
30 if they were individual applicants under this act.

1 Information provided under this act shall be confidential
2 except that it shall be available at all times to the
3 commission, the State Police, and other law enforcement
4 agencies entrusted with the enforcement of this act.

5 (b) Multiple bids.--If any bidder chooses to bid on more
6 than one store he shall in all ways comply with the terms of
7 this act, except that such bidder need submit only one certified
8 or bank check or bid bond in the amount of 10% of his highest
9 bid for a store on which he is submitted bids. If any bidder
10 chooses to bid on more than one store, such multiple bidder
11 shall submit to the commission with his bids a list of his
12 stores to which he will be bound in the case he is the highest
13 qualified bidder on more than one store.

14 (c) Filing date.--All bids shall be in the hands of the
15 commission at the close of business on the business day next
16 before the sales date. The commission shall open all bids and
17 record the contents thereof in public on the sales date.

18 (d) Discretion of commission.--The commission shall have the
19 right to reject any or all bids, to waive technical defects and
20 to accept or reject any part of any bid if the judgment of the
21 commission the best interests of the Commonwealth shall require
22 it. No bid shall be considered unless accompanied by a certified
23 or bank check or bid bond as prescribed above.

24 (e) Highest bidder.--

25 (1) The commission shall determine the highest bidder
26 for each store. The determination shall be made as soon as
27 practicable after the sales date.

28 (2) Within ten days of this determination such bidder
29 shall submit a surety performance bond for 100% of his bid
30 price for such store license. Such additional bonds shall be

1 held by the commission until the full price has been paid to
2 it on the date of settlement.

3 (3) In case a tie shall exist by reason of two or more
4 persons submitting identical highest bids, the commission at
5 its sole discretion shall determine the person to whom such
6 store is to be assigned.

7 (4) If a person who has bid on more than one store is
8 determined to be the highest bidder, he shall be assigned the
9 store highest on his preference list and all other bids of
10 that bidder shall be deemed withdrawn. In such case the
11 assignment of the store upon which such bid had been
12 withdrawn will be made to the next highest bidder.

13 (5) Upon the determination of a highest bidder, his name
14 and the store assigned to him shall be certified by the
15 commission to the Liquor Control Board.

16 (f) Retail licenses.--

17 (1) Upon the certification of the name of the highest
18 bidder for a store, the Liquor Control Board shall promptly
19 issue a retail license as per the application of the bidder.
20 This license shall be issued together with the approval of
21 the Liquor Control Board that said licensee is certified to
22 operate a retail store on the premises of the Pennsylvania
23 Liquor Store so sold.

24 (2) The Liquor Control Board may refuse to award such
25 license upon good cause shown that the bidder does not meet
26 the qualifications for holding a retail license. If the
27 Liquor Control Board shall refuse to award such license, it
28 shall notify the commission of this refusal, whereupon the
29 commission shall determine the next highest bidder for that
30 store and shall certify his name to the Liquor Control Board.

(3) No issuance of a license shall be made until all awards have been determined, except awards for those stores for which no qualified bid above the minimum acceptable price shall have been received.

Section 504. Lack of acceptable bid.

If a store does not receive a qualified bid over the minimum sales price, the commission shall reclassify said stores as Group E, and shall reinvoke bids for said stores as provided herein, except that the date for commencing advertisement for bids shall be 21 months after the effective date of this act and the sales date shall be 24 months after the effective date of this act. Under appropriate circumstances where failure to certify bids is due to the lack of acceptable bids above the minimum sales price, the commission shall reconsider and may redetermine the minimum sales price.

Section 505. Transfer of license,

(a) Within three years.--If at anytime after the award of a license but within three years after the effective date of this act the retail licensee wishes to change the location of his store or operation he shall submit an application for such transfer to the commission, which shall grant or deny such application according to the following criteria and such other rules and regulations as it may deem necessary:

(1) The public benefit to be derived from such transfer, including improvement in the quality of service, probability of lower prices to the consumer, and availability of service to present and potential customers.

(2) The applicability of State law and local ordinances as to location of liquor stores.

(3) The effect of the proposed transfer on the

1 competitive market.

2 (4) The duplication of services in high density
3 population areas.

4 (5) Such other criteria reasonably necessary to protect
5 public health, safety and welfare as the commission shall set
6 forth in its rules and regulations.

7 (b) After three years.--After three years from the effective
8 date of this act, all applications for transfers shall be made
9 in accordance with law.

10 Section 506. Divestiture.

11 (a) Notice and costs.--In the case of every store sold in
12 the Commonwealth the commission shall give notice to the
13 landlord of a date certain for termination of the existing
14 lease. This date may not be less than five nor more than ten
15 business days after divestiture and shall be given sufficiently
16 before said date as to meet the requirements of the lease. The
17 commission shall compute the pro rata costs of operation of the
18 store for the days beyond divestiture and said costs shall be
19 borne by the licensee for that store.

20 (b) Change of location.--In the case the buyer is moving his
21 location during said extra days beyond divestiture, he shall
22 have the right of entry and removal of his liquor and
23 personalty, but may not sell liquor at that location.

24 (c) Same location.--If the buyer is continuing the liquor
25 business at that location he may begin sales on the day after
26 divestiture.

27 (d) Settlement.--The commission and the retail licensee
28 shall fix a date within 30 days prior to divestiture for the
29 purpose of settlement. At settlement the licensee shall pay the
30 balance of the purchase price, prorated operating expenses due

1 to lease extensions beyond divestiture and all other appropriate
2 charges.

3 (e) Final inventory.--On the day of divestiture, the
4 commission shall compile a final inventory of all liquor on hand
5 in each store, excluding any liquor in transit. Adjustments
6 shall be made as to the variance between the dollar amount of
7 liquor on hand and that which was estimated to be on hand in the
8 prospectus. Liquor in transit shall be returned to the State
9 warehouse.

10 Section 507. Commencement of business.

11 From and after divestiture a retail licensee may commence
12 business activities subject to the limitation that items on the
13 restricted list, as provided for in section 511, shall be
14 purchased only from the Commonwealth. Any other item which he
15 chooses to sell shall be bought from a licensed wholesaler.

16 Section 508. Failure to award license.

17 If any store remains unsold 24 months after the effective
18 date of this act, the commission shall return the liquor to the
19 State warehouse, remove and assign the personalty to the
20 Department of General Services for disposition in accordance
21 with law, terminate the contracts of the employees, and give
22 notice of termination to the landlord as required by the lease.
23 The commission may close an unsold store at anytime prior to
24 divestiture.

25 Section 509. Surplus liquor and warehouses.

26 (a) Sale to retail license bidders.--Any stock of liquor
27 remaining unsold three years after the effective date of this
28 act shall be disposed of in the manner provided for the sale of
29 surplus Commonwealth property, except that it may only be sold
30 in the Commonwealth to retail license bidders.

1 (b) Warehouses.--Such warehouses as may be titled in the
2 Commonwealth shall be retained, sold or otherwise disposed of
3 after three years from the effective date of this act in the
4 manner as is provided by law.

5 Section 510. Continuation of Pennsylvania Liquor Stores.

6 Notwithstanding the contemplated sale of a store the Liquor
7 Control Board shall continue to operate, supply and resupply
8 said store until divestiture.

9 Section 511. Transfer of certain powers and duties.

10 For the purposes of this act, all of the powers and duties
11 relating to warehousing of liquor and wine currently vested in
12 the Liquor Control Board by the act of April 12, 1951 (P.L.90,
13 No.21), known as the "Liquor Code," are hereby transferred to
14 the commission.

15 Section 512. Establishment of prices.

16 (a) Wholesale prices.--The Liquor Control Board shall
17 establish subject to the approval of the commission for every
18 item which it stocks a wholesale price and shall sell its stock
19 of liquor to retailers at such price.

20 (b) Retail prices.--The Liquor Control Board shall fix
21 subject to the approval of the commission the retail price of
22 liquor for items on the restricted list. The retail price of
23 liquor on the restricted list shall be 18% higher than the
24 wholesale price. There shall, however, be established only one
25 price for each restricted list item no matter where sold. The
26 Liquor Control Board shall allow discount sales to holders of
27 hotel, restaurant and club licenses, but the price after
28 discount shall not be lower than the wholesale price.

29 (c) Termination of wholesale business.--Three years after
30 the effective date of this act the Liquor Control Board shall

1 cease making sales at wholesale.

2 Section 513. Penalty.

3 (a) Misdemeanor.--In addition to all other penalties
4 provided by law, any person, association, partnership, firm or
5 corporation who shall violate any provision of this act or who
6 shall willfully neglect to comply with any of the provisions of
7 this act, or who shall make a false statement or false oath as
8 to any matter, fact, or thing in any statement required to be
9 filed under this act shall be guilty of a misdemeanor of the
10 first degree.

11 (b) Suspension and revocation of license.--The right of the
12 Liquor Control Board to suspend and revoke licenses granted
13 under this act shall exist in addition to the penalties set
14 forth in this section.

15 CHAPTER 7

16 EMPLOYEE RIGHTS

17 Section 701. Definitions.

18 As used in this chapter the following words and phrases shall
19 have, unless the context clearly indicates otherwise, the
20 meanings given to them in this section:

21 "Agreement." The collective bargaining agreement in force at
22 the time of divestiture between the bargaining unit for which
23 the union is recognized as the exclusive bargaining agent by the
24 Liquor Control Board and the Commonwealth.

25 "Buyer." Buyer shall mean the person to whom a retail
26 license is issued by the Liquor Control Board pursuant to this
27 act.

28 "Employee." Employee shall mean only those persons covered
29 by the agreement and who also are employed by the buyer after
30 divestiture.

1 Section 702. Continuation of employment.

2 On the date of divestiture the buyer shall commence the
3 employment of all full-time employees of the Pennsylvania Liquor
4 Store he has been awarded. Such continuation of employment shall
5 be at the same terms and conditions with the same rights and
6 duties as specified in the agreement and the buyer shall be
7 deemed to have assumed all the rights and duties of the
8 Commonwealth.

9 Section 703. Extension of agreements.

10 If an agreement expires after 16 months from the effective
11 date of this act it shall be deemed to extend until the end of
12 36 months after the effective date of this act, but no longer,
13 and shall be binding on the buyer.

14 Section 704. Employee benefits.

15 All employee benefits which are provided by the Commonwealth
16 under the agreement, such as the obligation to purchase health
17 and life insurance and to pay pensions, shall continue to be
18 borne by the Commonwealth for the duration of the agreement. The
19 shares of the benefits which are the responsibility of the
20 employee in whole or in part under the terms of the agreement
21 shall be deducted by the buyer and paid over to the
22 Commonwealth. For the purpose of this section the rights of the
23 employees shall continue for the life of the agreement as if it
24 were still between the Commonwealth and the employee. The
25 employee shall be deemed a Commonwealth employee for the purpose
26 of this section only.

27 Section 705. Job preference.

28 If a former employee of the Pennsylvania Liquor Stores is
29 unemployed by reason of the termination of the collective
30 bargaining agreement, or if any employee of the Commonwealth is

1 unemployed by reason of this act he shall be deemed preferred on
2 the civil service list for any employment for which he would
3 otherwise be qualified in the Liquor Control Board.

4 CHAPTER 9

5 MISCELLANEOUS PROVISIONS

6 Section 901. Appropriation.

7 (a) The sum of \$1,200,000 is hereby appropriated out of the
8 State Store Fund to be used as follows:

9 (1) For the purpose of advertising as required by
10 section 502(a), the sum of \$200,000.

11 (2) For the purpose of administration of the act
12 generally, \$1,000,000.

13 Section 902. Limitation on certain expenditures.

14 The appropriation made under section 901 shall not be used
15 for the purpose of section 704 and any expenditures occasioned
16 by section 703 shall be paid out of the appropriation to the
17 Liquor Control Board.

18 Section 903. Effective date.

19 This act shall take effect immediately.