

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 101 Session of 2013

INTRODUCED BY SCARNATI, PILEGGI, BROWNE, WAUGH, ERICKSON,
MENSCH, VULAKOVICH, YAW, WHITE, VANCE, WARD, ALLOWAY, FOLMER,
BAKER, FERLO, SCHWANK, YUDICHAK, SOLOBAY AND COSTA,
MARCH 19, 2013

REFERRED TO LAW AND JUSTICE, MARCH 19, 2013

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 powers of the board and for shipment of
18 wine into Commonwealth; and establishing the Pennsylvania
19 Wine Industry Promotion Board.

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

22 Section 1. Section 207(a) of the act of April 12, 1951
23 (P.L.90, No.21), known as the Liquor Code, reenacted and amended
24 June 29, 1987 (P.L.32, No.14), and amended November 30, 2004
25 (P.L.1727, No.221) and December 8, 2004 (P.L.1810, No.239), is

1 amended to read:

2 Section 207. General Powers of Board.--Under this act, the
3 board shall have the power and its duty shall be:

4 (a) To buy, import or have in its possession for sale and
5 sell liquor, alcohol, corkscrews, wine and liquor accessories,
6 trade publications, gift cards, gift certificates, wine- or
7 liquor-scented candles and wine glasses in the manner set forth
8 in this act: Provided, however, That all purchases shall be made
9 subject to the approval of the State Treasurer, or his
10 designated deputy. The board shall buy liquor and alcohol at the
11 lowest price and in the greatest variety reasonably obtainable.
12 Such sales may be to persons and entities located both in this
13 Commonwealth and outside this Commonwealth.

14 * * *

15 Section 2. Section 488 of the act, added February 21, 2002
16 (P.L.103, No.10), is amended to read:

17 Section 488. Shipment of Wine [into Commonwealth].--(a) The
18 shipment of wine [from out-of-State] to residents of this
19 Commonwealth [is prohibited, except as otherwise provided for
20 in] shall be governed by this section.

21 (b) Notwithstanding any other provision of this act or law
22 to the contrary, a person licensed by the board or another state
23 as a producer[, supplier, importer, wholesaler, distributor or
24 retailer] of wine and who obtains a direct wine shipper license
25 as provided for in this section may ship up to [nine] eighteen
26 liters per month of any wine [not included on the list provided
27 for in subsection (c)] on the Internet, telephone or mail order
28 of any resident of this Commonwealth who is at least twenty-one
29 (21) years of age for such resident's personal use and not for
30 resale.

(c) Each month, the board shall publish on the Internet a list of all classes, varieties and brands of wine available for sale in the Pennsylvania Liquor Stores. [A person holding a direct shipper license may ship only those classes, varieties and brands of wine not included on the list at the time an Internet order is placed.]

(c.1) Prior to issuing a direct wine shipper license, the board shall require the person seeking the license to:

(1) File an application with the board.

(2) Pay a one hundred dollar (\$100) registration fee.

(3) Provide to the board a true copy of its current alcoholic beverage license issued by the board or another state, if applicable.

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

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

(d) [An out-of-State] A direct wine shipper shall:

(1) Not ship more than [nine] eighteen liters per month on the Internet, telephone or mail order of any person in this Commonwealth.

(2) Report to the board each year the total of wine shipped [into] to residents of this Commonwealth in the preceding calendar year.

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

(4) 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.

(5) Require proof of age of the recipient, in a manner or format approved by the board before any wine is shipped to a resident of this Commonwealth.

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

(7) Pay to the Department of Revenue all taxes due on sales to residents of this Commonwealth. The amount of such taxes shall be calculated as if the sales were in this Commonwealth at the locations where delivery is made. The wine delivered under the authority of this subsection shall be subject to the sales and use tax imposed by section 202 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the sales and use tax imposed by Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," and the sales and use tax imposed by the act of June 5, 1991 (P.L.9, No.6), known as the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class," and the direct wine shipment tax imposed under this section.

(8) Annually renew its license by paying a renewal fee established by the board.

(e) A direct shipper may ship wine on the Internet, telephone or mail order of a resident into this Commonwealth provided that the wine [is shipped to a Pennsylvania Liquor Store selected by the resident. The wine will be subject to taxes in the same manner as wine sold directly by the board. The wine will not be released by the State store until all moneys

1 due, including all taxes and fees, have been paid by the
2 resident.] will be subject to all taxes due on sales to
3 residents of this Commonwealth with the amount of such taxes to
4 be calculated as if the sale were in this Commonwealth at the
5 location where delivery is made. The wine delivered under the
6 authority of this subsection shall be subject to the sales and
7 use tax imposed by section 202 of the "Tax Reform Code of 1971,"
8 the sales and use tax imposed by Article XXXI-B of the "Second
9 Class County Code," and the sales and use tax imposed by the
10 "Pennsylvania Intergovernmental Cooperation Authority Act for
11 Cities of the First Class," and the direct wine shipment tax
12 imposed under this section.

13 (f) [A person shall sign an affidavit provided by the
14 Pennsylvania Liquor Store where the wine was delivered to
15 stating that the wine will only be used for the person's
16 personal use.] Any person who resells wine obtained under this
17 section commits a misdemeanor of the second degree.

18 (g) The board may promulgate such rules and regulations as
19 are necessary to implement and enforce the provisions of this
20 section. [The board may charge the resident a fee to cover the
21 cost associated with processing the Internet order.]

22 (h) The board shall submit [monthly] annual reports to the
23 Appropriations Committee and the Law and Justice Committee of
24 the Senate and to the Appropriations Committee and the Liquor
25 Control Committee of the House of Representatives summarizing
26 the number of direct shipper licenses issued by the board[,] and
27 the quantity of wine sold by direct wine shippers pursuant to
28 this section [and the total dollar value of sales under this
29 section].

30 (i) The term "wine" as used in this section shall mean

1 liquor which is fermented from grapes and other fruits, having
2 alcoholic content of twenty-four per centum or less. The term
3 "wine" shall not include malt or brewed beverages nor shall wine
4 include any products containing alcohol derived from malt,
5 grain, cereal, molasses or cactus.

6 (j) The term "direct wine shipper" as used in this section
7 shall mean a wine producer who holds a direct wine shipper
8 license as provided in this section and includes a limited
9 winery.

10 (k) A direct wine shipment tax is hereby imposed and
11 assessed at the rate of twelve per centum of the net price of
12 all wines sold and delivered under the authority of this
13 section, which tax shall be collected by the direct wine shipper
14 from the purchaser and shall be paid over to the Department of
15 Revenue as provided in this section. Unless otherwise specified,
16 the tax shall be assessed, collected and enforced by the
17 Department of Revenue under the provisions of Article II of the
18 "Tax Reform Code of 1971."

19 (l) Receipts from the tax imposed under subsection (k) shall
20 be deposited into the General Fund. Annually, on January 15 and
21 July 15, the amount of two hundred fifty thousand dollars
22 (\$250,000) shall be transferred from the General Fund to a
23 restricted account within the General Fund. The moneys of the
24 restricted account are hereby appropriated on a continuing basis
25 to the Pennsylvania Wine Industry Promotion Board for the
26 purpose of awarding grants under section 488.1.

27 Section 3. The act is amended by adding a section to read:

28 Section 488.1. Pennsylvania Wine Industry Promotion Board.--

29 (a) There is established a board to be known as the
30 Pennsylvania Wine Industry Promotion Board.

1 (b) The Pennsylvania Wine Industry Promotion Board shall be
2 composed of the following members:

3 (1) Four members appointed by the General Assembly under
4 subsection (c).

5 (2) One member appointed by the Governor under subsection
6 (d).

7 (c) Appointments of members by the General Assembly shall be
8 made as follows:

9 (1) One individual appointed by the president pro tempore of
10 the Senate.

11 (2) One individual appointed by the minority leader of the
12 Senate.

13 (3) One individual appointed by the speaker of the House of
14 Representatives.

15 (4) One individual appointed by the minority leader of the
16 House of Representatives.

17 (5) Legislative appointees must be residents of this
18 Commonwealth, have substantial experience or expertise in the
19 Pennsylvania wine industry and serve at the pleasure of the
20 appointing authority.

21 (d) One gubernatorial appointee must be a resident of this
22 Commonwealth, have substantial experience or expertise in the
23 Pennsylvania wine industry and serve at the pleasure of the
24 Governor.

25 (e) Three members of the Pennsylvania Wine Industry
26 Promotion Board shall constitute a quorum. The adoption of a
27 resolution, awarding of a grant or other action of the
28 Pennsylvania Wine Industry Promotion Board shall require a
29 majority vote of the members of the Pennsylvania Wine Industry
30 Promotion Board.

1 (f) The members of the Pennsylvania Wine Industry Promotion
2 Board shall not be entitled to compensation for their services
3 as members of the board.

4 (g) Appointing authorities shall appoint initial
5 Pennsylvania Wine Industry Promotion Board members within thirty
6 (30) days of the effective date of this section. Whenever a
7 vacancy occurs on the Pennsylvania Wine Industry Promotion
8 Board, the appointing authority shall appoint a successor member
9 within 30 days of the vacancy.

10 (h) The act of July 19, 1957 (P.L.1017, No.451), known as
11 the "State Adverse Interest Act," shall apply to the
12 Pennsylvania Wine Industry Promotion Board.

13 (i) The Pennsylvania Wine Industry Promotion Board shall do
14 all of the following:

15 (1) Meet as often as necessary but at least annually.

16 (2) Adopt guidelines establishing the procedure by which an
17 entity may submit an application for grant funding under this
18 section to the Pennsylvania Wine Industry Promotion Board.

19 (3) The Pennsylvania Wine Industry Promotion Board shall
20 have the following duties as to awarding grants:

21 (i) Award grants to entities for the purpose of increasing
22 the production of Pennsylvania made wines and enhancing the
23 Pennsylvania wine industry through promotion, marketing and
24 research-based programs and projects.

25 (ii) Allocate grants through a competitive grant review
26 process established by the Pennsylvania Wine Industry Promotion
27 Board. The application for a grant shall include:

28 (A) the purpose for which the grant shall be utilized;

29 (B) information indicating need for the grant;

30 (C) an estimated budget;

1 (D) methods for measuring outcomes; and

2 (E) any other criteria as the office may require.

3 (iii) Require grant recipients to provide the Pennsylvania
4 Wine Industry Promotion Board with full and complete access to
5 all records relating to the performance of the grant and to
6 submit at such time and in such form as may be prescribed
7 truthful and accurate information that the Pennsylvania Wine
8 Industry Promotion Board may require.

9 (iv) Conduct a thorough annual evaluation of each program
10 for which a grant under this section is made. The Pennsylvania
11 Wine Industry Promotion Board shall seek repayment of funds if
12 it determines that funds are not utilized for the original
13 stated purpose.

14 (v) Submit an annual report to the General Assembly
15 detailing all actions of the Pennsylvania Wine Industry
16 Promotion Board and grants awarded under this section.

17 (j) The Department of Agriculture shall supply all necessary
18 assistance to assist the Pennsylvania Wine Industry Promotion
19 Board in carrying out its duties and responsibilities.

20 Section 4. This act shall take effect in 60 days.