

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 975 Session of 2017

INTRODUCED BY TURZAI, BARRAR, BERNSTINE, BLOOM, CORBIN, CORR, CUTLER, DOWLING, DUNBAR, EVANKOVICH, EVERETT, FEE, GREINER, GROVE, A. HARRIS, HELM, HICKERNELL, IRVIN, JAMES, KAMPF, KAUFFMAN, KNOWLES, MACKENZIE, MAHER, MARSHALL, MASSER, MCGINNIS, MENTZER, MILNE, MUSTIO, ORTITAY, PICKETT, REESE, ROTHMAN, SACCONI, SANKEY, SCHEMEL, SIMMONS, SONNEY, STAATS, TOPPER, WALSH, WARD, WATSON, WHEELAND AND KEEFER, APRIL 3, 2017

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 3, 2017

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," in
 17 preliminary provisions, further providing for definitions;
 18 and, in licenses and regulations, liquor, alcohol and malt
 19 and brewed beverages, providing for wine wholesale license
 20 and for wine retail license.

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

23 Section 1. Section 102 of the act of April 12, 1951 (P.L.90,
 24 No.21), known as the Liquor Code, is amended by adding a

1 definition to read:

2 Section 102. Definitions.--The following words or phrases,
3 unless the context clearly indicates otherwise, shall have the
4 meanings ascribed to them in this section:

5 * * *

6 "Retail store" shall mean a reputable place operated by
7 persons of good repute which primarily sells, supplies or offers
8 consumer products for sale directly to consumers and has an area
9 under one roof of greater than five thousand square feet.

10 * * *

11 Section 2. The act is amended by adding sections to read:

12 Section 410.1. Wine Wholesale License.--(a) Notwithstanding
13 any other provision of law, an importer licensed under this
14 article may make application to the board on forms prescribed by
15 the board for a wine wholesale license for the purpose of
16 selling and distributing wholesale wine to the board, to all
17 licensees and to United States Armed Forces facilities located
18 on United States Armed Forces installations within this
19 Commonwealth. Within thirty days of the effective date of this
20 section, the board shall accept applications, and the board
21 shall approve the issuance of a license within sixty days of
22 receipt of the application if the applicant meets the
23 requirements under this section. An applicant shall submit the
24 initial license fee with the application to the board. The
25 Department of Revenue shall audit wine wholesale licensee's to
26 determine whether the holder of a wine wholesale license is
27 remitting taxes. The following shall apply:

28 (1) The wine wholesale licensee shall:

29 (i) Provide to the board a list of the brands of wine it
30 will distribute.

1 (ii) Serve the board, all licensees, United States Armed
2 Forces facilities and any other authorized person permitted to
3 purchase and resell wine under this act and make wine available
4 for sale under the same pricing structure.

5 (iii) Post a schedule of prices with the board as follows:

6 (A) A schedule of prices shall identify the filer by name,
7 address and license number on forms prescribed by the board.

8 (B) Schedules shall be filed on or before the twenty-fifth
9 day of each month and shall become effective on the first day of
10 the second succeeding calendar month. When the twenty-fifth day
11 of the month falls on a Saturday, Sunday or holiday, schedules
12 may be filed on the following business day.

13 (C) Amended schedules of prices shall be filed on a form and
14 in a manner as designated by the board no later than the
15 twentieth day of the month prior to the effective date of the
16 schedule being amended. When the twentieth day of the month
17 falls on a Saturday, Sunday or holiday, amended schedules may be
18 filed on the following business day.

19 (D) The schedules filed each month which contain a listing
20 of all brands of wine to be sold shall be known as master
21 schedules. The board may permit or require the filing of short
22 form schedules for any particular month in place of the master
23 schedule. Short form schedules shall show all new items, price
24 changes or items discontinued since the last filing of a master
25 schedule. All schedules shall contain statements that the board
26 may permit or require.

27 (iv) Keep a detailed log of wholesale wine transactions,
28 including sales to the board, all licensees, United States Armed
29 Forces facilities and any other authorized purchaser under this
30 act.

1 (2) The wine wholesale licensee may sell and distribute more
2 than one brand of wine under the same license and shall provide
3 any contractual agreements between the wine wholesale licensee
4 and the licensed manufacturer to the board.

5 (3) The wine wholesale licensee may amend the list of brands
6 of wine it distributes to include additional brands of wine. The
7 following shall apply:

8 (i) For brands of wine that have not been sold by the board
9 at Pennsylvania Liquor Stores or through special liquor orders,
10 the wine wholesale licensee shall apply to the board for
11 permission to add that brand to the licensee's list of brands
12 permitted to be sold under the license.

13 (ii) For each new brand of wine, an application filing fee
14 of two thousand five hundred dollars (\$2,500) shall be submitted
15 with the application.

16 (4) The wine products shipped into this Commonwealth must be
17 delivered to the wine wholesale licensee's licensed premises.
18 Upon delivery, the products shall be unloaded, inventoried and
19 remain on the licensed premises for forty-eight hours before
20 delivery is made to a Pennsylvania Liquor Store, a licensee's
21 licensed premises or United States Armed Forces facilities.
22 During that time period, the board may inspect and inventory
23 warehouses. In the event that the forty-eight-hour hold period
24 may cause economic hardship to the wholesaler, board or
25 licensees, case-by-case exceptions may be requested by the
26 wholesaler or supplier and may be granted by the board.

27 (5) The wine wholesale licensee may not engage in conduct
28 that would constitute any of the following:

29 (i) Variable pricing.

30 (ii) Unfair or deceptive trade practices proscribed under

1 Federal or State law or regulation.

2 (iii) Intentional exclusion of competing brands of wine from
3 the marketplace.

4 (6) The wine wholesale licensee may only sell and distribute
5 those products in this Commonwealth that are subject to a
6 contractual relationship between the licensee and one or more
7 licensed manufacturers or suppliers of wine.

8 (7) A wine wholesale licensee shall remit to the Department
9 of Revenue all applicable taxes. A wine wholesale licensee shall
10 be considered a State Liquor Store for the purpose of collecting
11 and remitting taxes under Article II of the act of March 4, 1971
12 (P.L.6, No.2), known as the Tax Reform Code of 1971, for
13 products sold by licensees for on-premises consumption. The
14 emergency State tax imposed under the act of June 9, 1936 (1st
15 Sp.Sess., P.L.13, No.4), entitled "An act imposing an emergency
16 State tax on liquor, as herein defined, sold by the Pennsylvania
17 Liquor Control Board; providing for the collection and payment
18 of such tax; and imposing duties upon the Department of Revenue
19 and the Pennsylvania Liquor Control Board," shall be included in
20 the retail price of wine offered for sale by the wine wholesale
21 licensee. The tax may not be assessed at the point of sale to
22 consumers. The wine wholesale licensee shall be required to
23 remit the taxes to the Department of Revenue.

24 (8) No wine wholesale licensee under this section may hold a
25 license or permit to engage in any sales of wine at retail to
26 residents of this Commonwealth, and no licensee or permit holder
27 selling wine at retail in this Commonwealth may obtain a wine
28 wholesale license from the board. No wholesale license may be
29 issued to any wine manufacturer or producer.

30 (9) Any licensed importer that wishes to obtain a wine

1 wholesale license shall do all of the following:

2 (i) Notify the board in writing.

3 (ii) Pay the licensing fees specified under paragraph (10).

4 (iii) Provide a statement to the board indicating that the
5 licensed importer plans to continuously operate under the wine
6 wholesale license for the duration of the license. The license
7 shall be in effect from the date of issuance and shall be
8 renewed on an annual basis with the board unless suspended,
9 revoked or not renewed under this act.

10 (10) In addition to any other fees provided for under this
11 act, a licensed importer shall submit an initial fee equal to
12 ten per centum of the cost of goods sold with the application.
13 For purposes of this paragraph, "cost of goods sold" shall be
14 determined as the purchase price the board paid to the licensed
15 importer for wine sold by the board in the most recent twelve-
16 month period.

17 (11) A wine wholesale license shall be in effect unless
18 suspended, revoked or not renewed under this act. A wholesale
19 license in good standing shall be renewed every year as follows:

20 (i) Wine wholesale licenses issued under this section shall
21 be subject to renewal each year.

22 (ii) The application for renewal shall be submitted, on a
23 form prescribed by the board, at least thirty days prior to the
24 expiration of the wine wholesale license and shall include, at a
25 minimum, an update of the information contained in the initial
26 and prior renewal applications and the payment of any renewal
27 fee required under this section.

28 (iii) A renewal fee of five per centum of the wine wholesale
29 licensee's gross receipts shall be due upon application for the
30 renewal of a license. For the purposes of this subparagraph,

1 "gross receipts" shall be determined as the total of all sales
2 of wine made to the board, all licensees, United States Armed
3 Forces facilities and any other authorized purchaser under this
4 act.

5 (iv) The board may revoke a wine wholesale license issued
6 under this section if it finds that the licensee or any of its
7 affiliates, executive officers, directors or general or limited
8 partners or persons holding a controlling interest in the
9 licensee:

10 (A) is in violation of any provision of this act;

11 (B) has furnished the board with false or misleading
12 information; or

13 (C) is no longer reputable or suitable for licensure.

14 (12) Any violation of this act or the board's regulations
15 for governing activity occurring under the authority of the wine
16 wholesale license may be the basis for any of the following:

17 (i) A fine, suspension or license revocation.

18 (ii) Nonrenewal of the license.

19 (iii) Other penalties authorized under section 471.

20 (13) The board shall have no authority to do any of the
21 following once wine wholesale licenses have been issued and
22 licensees have commenced providing wholesale wine products to
23 authorized purchasers:

24 (i) Determine what wine products may be sold in this
25 Commonwealth.

26 (ii) Set the price at which wine products may be sold at
27 wholesale or by retail licensees in this Commonwealth.

28 (iii) Sell wine products at wholesale to retail licensees or
29 any other authorized purchaser under this act.

30 (b) All fees paid to the board under this section shall be

1 deposited into the General Fund.

2 Section 417. Wine Retail License.--(a) The board shall
3 issue a wine retail license to a retail store upon application.

4 (b) Every applicant for a wine retail license shall file a
5 written application with the board in the form and containing
6 the information as the board shall from time to time prescribe.
7 The application shall contain and follow the requirements set
8 forth under section 403 and shall at a minimum contain the
9 following:

10 (1) a description of the retail store;

11 (2) a description of any alterations proposed to be made to
12 the retail store or any additional construction plans to be
13 undertaken after the approval by the board of the application
14 for a license; or

15 (3) proposed storage location.

16 (c) A wine retail license may be transferred under the
17 provisions and restrictions under section 404. Notwithstanding
18 any provision of law to the contrary, a wine retail license may
19 be transferred to another eligible person to be used at the same
20 licensed facility.

21 (d) In addition to any other fees provided for under this
22 act, an applicant shall be required to pay an initial
23 application fee in the amount of two hundred fifty thousand
24 dollars (\$250,000).

25 (e) A wine retail license is subject to renewal on an annual
26 basis. A renewal fee equal to two per centum of the wine retail
27 licensee's total gross receipts shall be due at the time the
28 renewal application is filed. For purposes of this paragraph,
29 "gross receipts" shall be determined as the total of all sales
30 of wine made to consumers for off-premises consumption in the

1 most recent twelve-month period.

2 (f) Every wine retail licensee may sell wine for off-
3 premises consumption from any location within its licensed
4 premises. The following shall apply:

5 (1) Products may be displayed on shelving units and systems
6 and in or on refrigerated cases and equipment, within the
7 discretion of the licensee, provided that the displays are not
8 designed to attract minors and that the manner and method of
9 display allows access by all customers, including the physically
10 handicapped.

11 (2) A wine retail licensee may store wine in a noncontagious
12 area that is not accessible to the public provided the storage
13 areas are:

14 (i) locked at all times when not being accessed by the
15 licensees' employees;

16 (ii) not accessible to employees under eighteen years of
17 age; and

18 (iii) identified by dimensions and location on forms
19 submitted in advance to the board.

20 (g) A wine retail licensee shall be permitted to hold:

21 (1) Tastings at any location in the retail store, provided
22 the tastings are in compliance with the provisions and
23 regulations regarding tastings held on licensed premises.

24 (2) Educational classes, including cooking classes, how-to
25 classes and seminars regarding the proper or recommended use,
26 consumption, identification, pairing, appellation, aging,
27 storage, characteristics, service and presentation of the
28 alcohol products that a wine retail licensee offers for sale,
29 during which classes the incidental consumption of alcohol by
30 registered participants of lawful age shall be permitted. The

1 classes may be free of charge to participants or may be offered
2 at fee.

3 (h) Wine retail licensees may purchase wine under the
4 following requirements and restrictions:

5 (1) Wine retail licensees shall buy wine sold in accordance
6 with their wine retail license from the board, as long as the
7 board continues to operate as a wholesaler, a wine wholesale
8 licensee or a winery licensed under this act.

9 (2) All products purchased by wine retail licensees and all
10 products purchased by restaurant and eating place licensees
11 owned by the same individual or company must be separately
12 purchased. Separate records must be maintained for all purchases
13 and sales by all wine retail licensees and restaurant or eating
14 place licensees, whether or not located within the same building
15 or owned by the same individual or company.

16 (i) Nothing in this section shall affect the ability of an
17 existing licensee to operate within the scope of its current
18 license as authorized by this act.

19 (1) Wine retail licensees shall be permitted to hold
20 restaurant or eating place licenses issued for areas within the
21 same building for which the wine retail license has been issued
22 or for a different building. Wine retail licenses and restaurant
23 or eating place licenses issued for areas within the same retail
24 stores may be issued for areas that are adjacent, abutting and
25 contiguous, and the board shall approve interior connections
26 between the areas.

27 (2) Notwithstanding any other provision of law, a holder of
28 a wine expanded permit under section 415 may continue to operate
29 under the permit as authorized by this act. The permit holder
30 may allow for the purchase of wine for off-premises consumption

1 to be paid for at a point of sale other than a point of sale
2 located on the licensed premises. The purchase of wine may not
3 occur at a point of sale where the customer scans the customer's
4 own purchases.

5 (j) For purposes of selling wine for off-premises
6 consumption:

7 (1) A wine retail licensee may sell in a single transaction
8 up to nine thousand (9,000) milliliters of wine.

9 (2) A wine retail licensee may sell wine from seven o'clock
10 antemeridian until eleven o'clock postmeridian every day except
11 Sunday.

12 (3) A wine retail licensee may sell wine from nine o'clock
13 antemeridian until eleven o'clock postmeridian on Sundays upon
14 submission to the board of a Sunday sales permit application and
15 a fee of two thousand dollars (\$2,000) per year.

16 (4) A wine retail licensee shall comply with the responsible
17 alcohol management provisions under section 471.1.

18 (5) A wine retail licensee shall utilize a transaction scan
19 device to verify the age of an individual who appears to be
20 under thirty-five years of age before making a sale of wine. A
21 wine retail licensee may not sell or share data from the use of
22 a transaction scan device, except that the licensee may use the
23 data to show the enforcement bureau of the board that the
24 licensee is in compliance with this act. As used in this
25 paragraph, the term "transaction scan device" means a device
26 capable of deciphering, in an electronically readable format,
27 the information encoded on the magnetic strip or bar code of an
28 identification card under section 495(a).

29 (6) A sale of wine shall be made through a register which is
30 staffed by a sales clerk who is at least eighteen years of age

1 and has been trained under section 471.1 and which utilizes a
2 transaction scan device for the sale. The sale of wine may not
3 occur at a point of sale where the customer scans the customer's
4 own purchases.

5 (7) The sale of wine shall for off-premises consumption be
6 considered a "purchase at retail" under section 201(f) of the
7 Tax Reform Code of 1971, a "sale at retail" under section 201(k)
8 of the Tax Reform Code of 1971 or a "use" under section 201(o)
9 of the Tax Reform Code of 1971.

10 (k) A wine retail licensee is not subject to section 493(14)
11 for the purposes of selling liquor for off-premises consumption.

12 (l) All fees paid to the board under this section shall be
13 deposited into the General Fund.

14 Section 3. This act shall take effect in 60 days.