

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 548 Session of 2019

INTRODUCED BY YAW, J. WARD, LANGERHOLC, MENSCH, STEFANO, REGAN, KILLION AND MARTIN, APRIL 16, 2019

REFERRED TO LAW AND JUSTICE, APRIL 16, 2019

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An
 2 act relating to alcoholic liquors, alcohol and malt and
 3 brewed beverages; amending, revising, consolidating and
 4 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; in
 18 Pennsylvania Liquor Control Board, further providing for
 19 general powers of board and for specific subjects on which
 20 board may adopt regulations; and providing for Pennsylvania
 21 retail franchise stores.

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, is amended by adding
 26 definitions 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 "Franchise" or "franchisee" shall mean a retail franchise
5 store.

6 * * *

7 "Growth incentive" shall mean the discount provided to a
8 franchisee, by the board, for product sales growth by the
9 franchisee from the previous fiscal year, which shall be
10 calculated and applied only after the franchisee has had one
11 full fiscal year of franchise operation. The board shall approve
12 and apply the growth incentive once a year and within three
13 months of the end of the fiscal year.

14 * * *

15 "Product identification number" shall mean the stock keeping
16 unit (SKU) or a successor method of identifying specific
17 products.

18 * * *

19 "Retail franchise store" shall mean a business that has a
20 retail franchise store contract with the board to sell liquor
21 and wine to the public solely for off-premises consumption,
22 under terms set by the board. The term includes all wine
23 expanded permit holders licensed under section 415 and any
24 business with significant retail experience the board chooses
25 under selection criteria and standards set by the board. The
26 standards set by the board shall include, but not be limited to:

27 (1) Minimum required number of SKUs available for sale at
28 all times.

29 (2) Appealing and clean retail store environment.

30 (3) Maximized store locations to support consumer

1 convenience.

2 (4) Other criteria established by the board for proper and
3 effective operation.

4 This term does not include a Pennsylvania Liquor Store.

5 "Retail franchise store contract" shall mean an agreement
6 between the board and a retail franchise store that allows the
7 retail franchise store to sell wine and liquor on behalf of the
8 board and which agreement has a term of not more than three
9 years, after which term the board has the right to renew the
10 contract if the retail outlet meets the standards set by the
11 board for sales, operational requirements, store appearance,
12 marketing support for board products, the number of product
13 identification numbers (SKUs) required by the board and other
14 standards the board may set.

15 * * *

16 "Wholesale price" shall mean the price paid by a franchisee
17 to purchase liquor and wine from the board and which price
18 reflects the discount given to the franchisee by the board.

19 * * *

20 Section 2. Section 207(b) of the act is amended and the
21 section is amended by adding a subsection to read:

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

24 * * *

25 (b) The following shall apply:

26 (1) To control the manufacture, possession, sale,
27 consumption, importation, use, storage, transportation and
28 delivery of liquor, alcohol and malt or brewed beverages in
29 accordance with the provisions of this act, [and] to fix the
30 wholesale [and] prices at which liquors and alcohol shall be

1 sold to licensees and franchises under this act and to fix the
2 retail prices at which liquors and alcohol shall be sold at
3 Pennsylvania Liquor Stores and franchises.

4 [(2) Except as provided in paragraphs (3) and (4), prices
5 shall be proportional with prices paid by the board to its
6 suppliers and may include a handling fee. This proportional
7 pricing provision shall not apply to special liquor orders
8 authorized under section 305(a).

9 (3) The board may price its best-selling items and limited
10 purchase items in a manner that maximizes the return on the sale
11 of those items.]

12 (3.1) The board shall develop and make public a pricing
13 formula and any changes to that formula, providing six months'
14 notice to liquor and wine vendors of changes to the pricing
15 formula. The pricing formula may have differing markups
16 depending on the classification of the product, such as value,
17 premium, super premium or luxury. The markup formula must be
18 identical within each product classification. The markup formula
19 set by the board shall be both price competitive with
20 neighboring states and grow profitably through premiumization.

21 (4) The board may discount the price of discontinued items.

22 (4.1) The board shall open two thousand (2,000) franchises
23 from January 1, 2020, to December 31, 2024. The location of the
24 franchises shall be determined by the board. The board may open
25 no fewer than four hundred (400) franchises in a calendar year
26 during this period, unless in calendar year 2024 there are less
27 than four hundred (400) franchises to open in order to reach two
28 thousand (2,000) franchise stores before December 31, 2024.

29 (5) All prices [of a particular] for each product
30 identification number for sale at Pennsylvania Liquor Stores and

1 franchises shall be uniform throughout the Commonwealth. The
2 board may establish a preferential price structure for wines
3 produced within this Commonwealth for the promotion of such
4 wines, as long as the price structure is uniform within each
5 class of wine purchased by the board.

6 (5.1) The board shall require franchises to purchase liquor
7 and wine products from the board. The board shall provide
8 delivery service of liquor and wine to all franchises at a
9 frequency that allows franchises to maintain acceptable
10 inventory volumes. The board may also establish delivery
11 services to a franchisee's warehouse. The board shall develop
12 criteria for an appropriate franchise warehouse.

13 (5.2) The board shall sell liquor and wine products to
14 franchises at wholesale prices as follows:

15 (i) For liquor and wine products at a retail price of
16 twenty-four dollars and ninety-nine cents (\$24.99) or less, the
17 discount rate shall be ten percent (10%) of the list price.

18 (ii) For liquor and wine products at a retail price of
19 twenty-five dollars (\$25) or more, the discount rate shall be
20 fourteen percent (14%) of the list price.

21 (5.3) The board shall seek to support franchises to achieve
22 volume growth objectives. To reward volume sales growth, the
23 board shall implement the following growth incentive program:

24 (i) To be eligible for a growth incentive, the growth of
25 sales of nine-liter cases must meet or exceed a minimum total
26 growth rate of four and one-half percent (4.5%). Growth of less
27 than four and one-half percent (4.5%) over the previous year
28 shall not produce a discount increase.

29 (ii) The growth incentive shall be calculated as follows:

30 (A) For growth of sales of nine-liter cases of four and one-

1 half percent (4.5%), the discount rate shall be increased by
2 three-fourths of one percent (0.75%).

3 (B) For growth of sales of nine-liter cases of five percent
4 (5%), the discount rate shall be increased by one percent (1%).

5 (C) For growth of sales of nine-liter cases of five and one-
6 half percent (5.5%), the discount rate shall be increased by one
7 and three-fourths percent (1.75%).

8 (D) For growth of sales of nine-liter cases of six percent
9 (6%), the discount rate shall be increased by two and one-half
10 percent (2.50%).

11 (iii) The maximum discount shall be eighteen percent (18%).

12 (5.4) A franchisee shall pay an initial fee of three
13 thousand dollars (\$3,000) for a franchise and a fee equal to two
14 percent (2%) of the cost of liquor and wine purchased from the
15 board for off-premises consumption. The initial fee shall not
16 apply to a franchisee that is the owner of a wine expanded
17 permit. The fee shall be paid to the State Treasury.

18 (6) On a [quarterly] monthly basis the board shall publish a
19 listing of [the wholesale and] Pennsylvania Liquor Store retail
20 prices on its publicly accessible Internet website.

21 (7) No later than April 1st of each year the board shall
22 submit an annual written report to the Law and Justice Committee
23 of the Senate and the Liquor Control Committee of the House of
24 Representatives. The report shall contain information related to
25 the method and rationale for pricing products.

26 (8) No later than June 1st of each year, the board shall
27 appear before the Law and Justice Committee of the Senate and
28 the Liquor Control Committee of the House of Representatives to
29 provide testimony in relation to its annual written report under
30 paragraph (7).

1 (9) The board shall require each Pennsylvania manufacturer
2 and each nonresident manufacturer of liquors, other than wine,
3 selling such liquors to the board, which are not manufactured in
4 this Commonwealth, to make application for and be granted a
5 permit by the board before such liquors not manufactured in this
6 Commonwealth shall be purchased from such manufacturer. Each
7 such manufacturer shall pay for such permit a fee which, in the
8 case of a manufacturer of this Commonwealth, shall be equal to
9 that required to be paid, if any, by a manufacturer or
10 wholesaler of the state, territory or country of origin of the
11 liquors, for selling liquors manufactured in Pennsylvania, and
12 in the case of a nonresident manufacturer, shall be equal to
13 that required to be paid, if any, in such state, territory or
14 country by Pennsylvania manufacturers doing business in such
15 state, territory or country. In the event that any such
16 manufacturer shall, in the opinion of the board, sell or attempt
17 to sell liquors to the board through another person for the
18 purpose of evading this provision relating to permits, the board
19 shall require such person, before purchasing liquors from him or
20 it, to take out a permit and pay the same fee as hereinbefore
21 required to be paid by such manufacturer. All permit fees so
22 collected shall be paid into the State Stores Fund. The board
23 shall not purchase any alcohol or liquor fermented, distilled,
24 rectified, compounded or bottled in any state, territory or
25 country, the laws of which result in prohibiting the importation
26 therein of alcohol or liquor, fermented, distilled, rectified,
27 compounded or bottled in Pennsylvania. The board may not sell
28 private label products. A Pennsylvania Liquor Store may continue
29 to sell private label products within its inventory after the
30 effective date of this section until the private label products

1 within its current inventory are depleted.

2 [(10) The proportional pricing under paragraph (2) shall not
3 apply to special liquor orders authorized under section 305(a).]

4 (11) As used in this subsection, the following words and
5 phrases shall have the meanings given to them in this paragraph:

6 ["Best-selling items" shall mean the one hundred fifty (150)
7 most sold product identification numbers of wine and the one
8 hundred fifty (150) most sold product identification numbers of
9 liquor as measured by the total number of units sold on a six-
10 month basis calculated every January 1 and July 1.]

11 "Discontinued items" shall mean those product identification
12 numbers that the board has voted to delist at a public meeting.

13 "Limited purchase items" shall mean those product
14 identification numbers that the board purchases on either a one-
15 time or nonrecurring basis due to the product's limited
16 availability or finite allocation.

17 ["Product identification number" shall mean the stock keeping
18 unit (SKU) or a successor method of identifying specific
19 products.]

20 * * *

21 (o) To regulate franchises under Article V-A.

22 Section 3. Section 208 of the act is amended by adding a
23 subsection to read:

24 Section 208. Specific Subjects on Which Board May Adopt
25 Regulations.--Subject to the provisions of this act and without
26 limiting the general power conferred by the preceding section,
27 the board may make regulations regarding:

28 * * *

29 (k) The licensing, location and operation of franchises
30 under Article V-A.

1 Section 4. The act is amended by adding an article to read:

2 ARTICLE V-A

3 RETAIL FRANCHISE STORES

4 Section 501-A. Authority to enter into retail franchise store
5 contracts.

6 Subject to the provisions of this act and regulations
7 promulgated under this act, the board shall enter into 2,000
8 retail franchise store contracts by December 31, 2024.

9 Section 502-A. Qualifications.

10 The board shall set the qualifications for operations of a
11 franchise which shall include, but not be limited to:

12 (1) Providing adequate linear shelving to display the
13 minimum amount of product required by the board under section
14 503-A(c).

15 (2) Operating and maintaining an updated computer system
16 that meets standards set by the board.

17 (3) Operating and maintaining an updated system for
18 recording sales and tax collection that meets standards set
19 by the board.

20 Section 503-A. Operation.

21 (a) Purchase and storage.--A franchisee shall be permitted
22 to purchase liquor and wine from the board, licensed wineries
23 under section 505 and licensed distilleries under section 505.4.
24 All liquor shall be kept on the premises, in a storage area or
25 warehouse approved by the board.

26 (b) Sale hours for off-premises consumption.--A franchise
27 may sell liquor and wine for off-premises consumption between
28 the hours of 9 a.m. and 11 p.m. on any day, to a person that is
29 not licensed under this act.

30 (c) Product identification numbers.--A franchise shall be

1 required to maintain a minimum amount of product identification
2 numbers in inventory at all times as determined by the board.

3 (d) Sale price.--A franchise store shall sell all liquor and
4 wine products at the same retail consumer prices as a
5 Pennsylvania Liquor Store.

6 (e) Other licenses.--Notwithstanding any other provision of
7 law, nothing in this act shall prohibit a franchisee from
8 holding:

9 (1) a distributor license under section 431;

10 (2) a restaurant liquor license or retail dispenser
11 license; or

12 (3) an importing distributor license under section 431.

13 Section 504-A. Conditions of operation.

14 (a) General rule.--A retail franchise store shall be subject
15 to the following conditions, obligations and requirements:

16 (1) Collect the tax required under Article II of the act
17 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
18 of 1971, and remit the tax to the Department of Revenue.

19 (2) May not sell or distribute liquor to an individual
20 under 21 years of age or to an individual who is visibly
21 intoxicated under section 493.

22 (3) Retail outlets and facilities involved in retail
23 operations, including a change to the facilities during the
24 term of retail franchise store contract, are subject to
25 approval, inspection and investigation by the board and
26 enforcement bureau.

27 (4) Adequate security shall be maintained to protect the
28 franchisee's inventory from unauthorized sale or diversion
29 and prevent unauthorized distribution.

30 (5) Notify the board within 15 days of a change in

1 persons holding an interest in the retail franchise store
2 contract.

3 (6) Notify the board within 15 days of becoming aware of
4 an arrest, criminal indictment or conviction by the
5 following:

6 (i) If the franchise is owned by an individual, the
7 individual.

8 (ii) If the franchise is owned by a partnership, a
9 partner.

10 (iii) If the franchise is owned by an association, a
11 member of the association.

12 (iv) If the franchise is owned by a corporation, an
13 officer, director or shareholder of the corporation.

14 (v) An affiliate of the franchise.

15 (7) Notify the board within 15 days of becoming aware of
16 a violation of this article by a person listed under
17 paragraph (6).

18 (8) The premises shall be configured in a manner and
19 with adequate safeguards to ensure that all liquor and wine
20 products are secure and that liquor and wine products may not
21 be accessed during prohibited hours of sale.

22 (9) An individual younger than 18 years of age may not
23 be employed to work at a register from which the sale of
24 liquor or wine takes place or be employed to handle any
25 liquor or wine products contained within a franchise store.

26 (10) The presence of at least one register designated by
27 signage where the sale of liquor and wine products shall
28 occur which shall be staffed by an individual at least 18
29 years of age.

30 (11) Comply with the responsible alcohol management

1 program training under section 471.1.

2 (12) All managers and employees who will engage in the
3 sale of liquor and wine shall attend responsible alcohol
4 management training within one month of commencing
5 employment.

6 (13) A transaction scan device shall be utilized to
7 verify the age of an individual who appears to be under 35
8 years of age before making a sale of liquor or wine.

9 (b) Violations.--A violation of this act or the board's
10 regulations for governing activity occurring under the authority
11 of the retail franchise store contract granted to a franchise
12 may be the basis for any of the following:

13 (1) a fine, suspension or retail franchise store
14 contract revocation;

15 (2) nonrenewal of a retail franchise store contract;

16 (3) revocation of operating authority; or

17 (4) a penalty authorized under section 471.

18 Section 505-A. Applications.

19 (a) General rule.--An applicant for a franchise shall file a
20 written application with the board in the form and containing
21 the information prescribed by the board and a nonrefundable
22 filing fee of \$750. An application shall contain the following:

23 (1) Pictures of the retail outlet, including the
24 interior and exterior.

25 (2) A description of the proposed part or parts of the
26 retail outlet in which liquor and wine will be displayed for
27 purchase.

28 (3) A description of alterations proposed to be made to
29 the retail outlet or additional construction plans to be
30 undertaken after the approval by the board of the application

1 for a license.

2 (4) A description of the location at which liquor and
3 wine sales will take place and how many registers will be
4 solely dedicated to the sale of liquor and wine.

5 (5) Proposed storage locations for liquor and wine
6 inventory.

7 (6) Any other information the board may require.

8 (b) Citizenship and residency.--If the applicant is a
9 natural person, the applicant's application shall show that the
10 applicant is a citizen of the United States and has been a
11 resident of this Commonwealth for at least two years immediately
12 preceding the application.

13 (c) Corporate applicant.--If the applicant is a corporation,
14 the application shall show that the corporation holds a
15 certificate of authority to transact business in this
16 Commonwealth.

17 (d) Verified signature required.--Each application shall be
18 signed and verified by oath or affirmation by one of the
19 following:

20 (1) if a natural person, the owner;

21 (2) if an association, by a member or partner of the
22 association; or

23 (3) if a corporation, by an executive officer of the
24 corporation or a person specifically authorized by the
25 corporation to sign the application, to which shall be
26 attached written evidence of the person's authority.

27 (e) Posting notice of application.--An applicant for a
28 retail franchise store contract shall post, for a period of at
29 least 30 days beginning with the day on which the application is
30 filed with the board, in a conspicuous place on the outside of

1 the premises or at the proposed new location for which the
2 license is applied, a notice of the application. The notice
3 shall be in a form, size and contain any provisions as the board
4 may require by regulation. Proof of the posting of the notice
5 shall be filed with the board.

6 (f) False statements.--If any false statement is
7 intentionally made in any part of the application, the affiant
8 shall be deemed guilty of a misdemeanor and, upon conviction,
9 shall be subject to the penalties provided by this act.

10 (g) Municipality notified.--Upon receipt of an application
11 for a new franchise, the board shall immediately notify, in
12 writing, the municipality in which the premises is located.

13 Section 506-A. Contracting decisions.

14 (a) Investigation.--The board shall investigate:

15 (1) If the applicant and officers, directors and
16 principals, if any, are of good repute, responsible and
17 suitable candidates for operating as a franchise.

18 (2) Whether the applicant possesses adequate, legitimate
19 and verifiable financial resources to:

20 (i) Operate a franchise.

21 (ii) Purchase and maintain the required amount of
22 inventory under section 503-A(c).

23 (iii) Meet and maintain all financial obligations to
24 continually operate a franchise.

25 (3) Whether the applicant proposes an acceptable retail
26 outlet and location for the sale of liquor and wine.

27 (4) Whether the planned operation of the applicant
28 complies with this article and all applicable sections of
29 this act.

30 (b) Location.--

1 (1) The board shall conduct an investigation to
2 determine the feasibility of the location and type of retail
3 outlet that the applicant is currently operating. The board
4 shall consider:

5 (i) The proximity of the proposed location to an
6 existing Pennsylvania Liquor Store or proposed or
7 existing franchise.

8 (ii) Whether the proposed location would impact the
9 public health, welfare, peace and morals.

10 (iii) Whether the existence of a franchise in the
11 proposed location could create law enforcement issues.

12 (iv) Whether the interior and exterior premises are
13 clean, orderly and are in full compliance with all State
14 and local building codes and ordinances.

15 (v) Whether the proposed location within the
16 community is in compliance with all ordinances.

17 (2) All expanded wine permit holders licensed under
18 section 415 shall be exempt from the requirements of this
19 subsection.

20 (c) Contract prohibition.--

21 (1) A retail franchise store contract shall not be
22 granted if the proposed location is:

23 (i) Within 300 feet of a preschool, elementary or
24 secondary school, church, hospital, charitable
25 institution or public playground without approval of the
26 board or municipality.

27 (ii) In a municipality that voted to preclude the
28 establishment of a Pennsylvania Liquor Store.

29 (iii) In an area that could create law enforcement
30 issues.

1 (2) All expanded wine permit holders licensed under
2 section 415 shall be exempt from the requirements of this
3 subsection.

4 Section 507-A. Hearings.

5 The board may hold hearings on applications for retail
6 franchise store contracts and contract renewals, as it deems
7 necessary, at a time the board shall fix for the purpose of
8 hearing testimony for and against applications for new retail
9 franchise store contracts and contract renewals.

10 Section 508-A. Retail franchise store contract renewal.

11 (a) Renewal.--A retail franchise store contract shall be
12 renewed every three years, unless the board finds that the
13 franchisee violated the term of their retail franchise store
14 contract or guidelines of the board.

15 (b) Renewal considerations.--In reviewing applications for
16 renewal, the board shall consider:

17 (1) The franchise's inventory of liquor and wine.

18 (2) Whether the franchise can continue the financial
19 viability of their business under section 506-A(a)(2).

20 (3) Any changes in the interior selling location of the
21 premises or proposed renovations.

22 (4) Any complaints lodged against the franchise.

23 (5) Any violations charged against the franchisee.

24 Section 509-A. Terms of contract.

25 The board shall set all the terms of the retail franchise
26 store contract, including revocation, suspension and penalties
27 on franchise affiliates, executive officers, directors or
28 general or limited partners or persons holding a controlling
29 interest in the retail outlet as a result of the following:

30 (1) violations of any provision of this act;

1 (2) furnishing the board with false or misleading
2 information;

3 (3) inability to establish continued financial viability
4 of the franchise under section 506-A(a)(2); or

5 (4) the franchise is no longer reputable or suitable for
6 a retail contract.

7 Section 5. This act shall take effect in 60 days.