

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 772 Session of 2021

INTRODUCED BY ROTHMAN, SCHMITT, MILLARD, ROWE, SAYLOR, SANKEY,
GLEIM AND POLINCHOCK, MARCH 4, 2021

REFERRED TO COMMITTEE ON LIQUOR CONTROL, MARCH 4, 2021

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 licenses and regulations and liquor, alcohol and malt and
19 brewed beverages, providing for limited spirit expanded
20 permits and further providing for malt and brewed beverages
21 manufacturers', distributors' and importing distributors'
22 licenses; and, in distilleries, wineries, bonded warehouses,
23 bailees for hire and transporters for hire, further providing
24 for limited distilleries and distilleries.

25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

27 Section 1. Section 102 of the act of April 12, 1951 (P.L.90,
28 No.21), known as the Liquor Code, is amended by adding
29 definitions to read:

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

4 * * *

5 "Mixed drink or cocktail" shall mean an alcoholic beverage,
6 composed in whole or in part of liquor, that is combined with
7 other alcoholic beverages, nonalcoholic beverages or
8 ingredients, including, but not limited to, ice, water, soft
9 drinks or flavorings.

10 * * *

11 "Ready-to-drink cocktail" shall mean a mixed drink or
12 cocktail that is premixed and packaged in an original container
13 for sale and not mixed or adulterated on a premises of a retail
14 licensee or distributor licensee.

15 * * *

16 "Spirits" shall mean a beverage that contains alcohol
17 obtained by distillation and mixed with water or other
18 substances in a solution, including brandy, rum, whiskey, gin or
19 other spirituous liquors and brandy, rum, whiskey, gin or other
20 spirituous liquors when rectified, blended or otherwise mixed
21 with alcohol or other substances. The term includes a ready-to-
22 drink cocktail.

23 * * *

24 Section 2. The act is amended by adding a section to read:

25 Section 415.1. Limited Spirit Expanded Permits.--(a) The
26 following shall apply:

27 (1) The board shall issue a limited spirit expanded permit
28 to a person who holds and possesses a valid restaurant liquor
29 license or hotel liquor license and also holds and possesses a
30 wine expanded permit.

1 (2) Nothing in this section shall affect the ability of an
2 existing licensee to operate within the scope of its current
3 license as authorized under this act, except that no sales of
4 ready-to-drink cocktails for off-premises consumption may take
5 place by a limited spirit expanded permit holder after two
6 o'clock antemeridian of any day until the licensee's permitted
7 hours of operation of the next day under section 406, including
8 Sundays if the licensee has a permit authorized under section
9 406(a)(3) or 432(f).

10 (3) A limited spirit expanded permit may not be issued to a
11 license holder whose underlying license is subject to a pending
12 objection by the director of the Bureau of Licensing or the
13 board under section 470(a.1), until the matter is decided, so
14 long as the underlying license is authorized to operate.
15 Notwithstanding any other provision of law, a holder of a
16 limited spirit expanded permit may continue to operate under the
17 permit if the holder's underlying license is objected to by the
18 director of the Bureau of Licensing or the board under section
19 470(a.1), until the matter is decided.

20 (4) If the board has approved the operation of another
21 business which has an inside passage or communication to or with
22 the licensed premises, the sale and purchase of ready-to-drink
23 cocktails shall be confined strictly to the premises in a
24 specifically designated area covered by the license. The
25 purchase of goods obtained from the unlicensed area of the
26 premises shall be permitted in the licensed area.

27 (5) For purposes of selling ready-to-drink cocktails for
28 off-premises consumption, a holder of a limited spirit expanded
29 permit is not subject to section 493(14).

30 (6) A limited spirit expanded permit holder shall comply

1 with the responsible alcohol management provisions under section
2 471.1.

3 (7) A limited spirit expanded permit holder may store ready-
4 to-drink cocktails in a noncontiguous area that is not
5 accessible to the public and is:

6 (i) locked at all times when not being accessed by the
7 licensees' employes; and

8 (ii) not accessible to employes under eighteen (18) years of
9 age.

10 (8) A limited spirit expanded permit holder shall utilize a
11 transaction scan device to verify the age of an individual who
12 appears to be under thirty-five (35) years of age before making
13 a sale of ready-to-drink cocktails. A limited spirit expanded
14 permit holder may not sell or share data from the use of a
15 transaction scan device, provided that the licensee may use the
16 data to show the enforcement bureau that the licensee is in
17 compliance with this act. As used in this paragraph, the term
18 "transaction scan device" means a device capable of deciphering,
19 in an electronically readable format, the information encoded on
20 the magnetic strip or bar code of an identification card under
21 section 495(a).

22 (9) A sale of ready-to-drink cocktails by a limited spirit
23 expanded permit holder shall be made through a register that is
24 well designated with signage, is staffed at all times by a sales
25 clerk who is at least eighteen (18) years of age, has been
26 trained under section 471.1 and utilizes a transaction scan
27 device for the sale. The sale of ready-to-drink cocktails may
28 not occur at a point of sale where the customer scans the
29 customer's own purchases.

30 (b) The application and renewal fee for a limited spirit

1 expanded permit shall be as follows:

2 (1) For a limited spirit expanded permit issued to a
3 licensee, an initial application fee of two thousand dollars
4 (\$2,000).

5 (2) An annual renewal fee of either one thousand dollars
6 (\$1,000) or two per centum of the cost of ready-to-drink
7 cocktails purchased from the distributor for off-premises
8 consumption, whichever is less.

9 (c) Notwithstanding the provisions of section 802, all fees
10 paid to the board under this section shall be paid into the
11 State Treasury for deposit as follows:

12 (1) All moneys shall be deposited in the State Stores Fund.

13 (2) Every June 1, all moneys deposited under paragraph (1)
14 shall be transferred to the General Fund.

15 (d) A limited spirit expanded permit holder may sell for
16 off-premises consumption, in a single transaction, up to one
17 hundred ninety-two ounces of ready-to-drink cocktails.

18 (e) The following shall apply:

19 (1) The sale of ready-to-drink cocktails by a limited spirit
20 expanded permit holder for off-premises consumption shall be
21 considered a "purchase at retail" under section 201(f) of the
22 act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform
23 Code of 1971," a "sale at retail" under section 201(k) of the
24 "Tax Reform Code of 1971" or a "use" under section 201(o) of the
25 "Tax Reform Code of 1971."

26 (2) A limited spirit expanded permit holder may, when filing
27 its required returns under Article II of the "Tax Reform Code of
28 1971," request a credit of any taxes paid in accordance with
29 paragraph (1) for ready-to-drink cocktails sold for off-premises
30 consumption and for which taxes were remitted to the department.

1 (f) A limited spirit expanded permit holder may not sell a
2 private label product.

3 Section 3. Section 431(b) of the act, amended June 5, 2020
4 (P.L.213, No.29), is amended to read:

5 Section 431. Malt and Brewed Beverages Manufacturers',
6 Distributors' and Importing Distributors' Licenses.--* * *

7 (b) The board shall issue to any reputable person who
8 applies therefor, and pays the license fee hereinafter
9 prescribed, a distributor's or importing distributor's license
10 for the place which such person desires to maintain for the sale
11 of malt or brewed beverages, not for consumption on the premises
12 where sold, and in quantities of not less than a case or
13 original containers containing one hundred twenty-eight ounces
14 or more which may be sold separately as prepared for the market
15 by the manufacturer at the place of manufacture. In addition, a
16 distributor license holder may sell malt or brewed beverages in
17 any amount to a person not licensed by the board for off-
18 premises consumption. The sales shall not be required to be in
19 the package configuration designated by the manufacturer and may
20 be sold in refillable growlers. In addition, a distributor
21 license holder may sell manufactured ready-to-drink cocktails in
22 an amount not to exceed one hundred ninety-two ounces to a
23 person not licensed by the board for off-premises consumption.
24 The sales shall not be required to be in the package
25 configuration designated by the manufacturer. The board shall
26 have the discretion to refuse a license to any person or to any
27 corporation, partnership or association if such person, or any
28 officer or director of such corporation, or any member or
29 partner of such partnership or association shall have been
30 convicted or found guilty of a felony within a period of five

1 years immediately preceding the date of application for the said
2 license: And provided further, That, in the case of any new
3 license or the transfer of any license to a new location, the
4 board may, in its discretion, grant or refuse such new license
5 or transfer if such place proposed to be licensed is within
6 three hundred feet of any church, hospital, charitable
7 institution, school or public playground, or if such new license
8 or transfer is applied for a place which is within two hundred
9 feet of any other premises which is licensed by the board: And
10 provided further, That the board shall refuse any application
11 for a new license or the transfer of any license to a new
12 location if, in the board's opinion, such new license or
13 transfer would be detrimental to the welfare, health, peace and
14 morals of the inhabitants of the neighborhood within a radius of
15 five hundred feet of the place proposed to be licensed. The
16 board may enter into an agreement with the applicant concerning
17 additional restrictions on the license in question. If the board
18 and the applicant enter into such an agreement, such agreement
19 shall be binding on the applicant. Failure by the applicant to
20 adhere to the agreement will be sufficient cause to form the
21 basis for a citation under section 471 and for the nonrenewal of
22 the license under section 470. If the board enters into an
23 agreement with an applicant concerning additional restrictions,
24 those restrictions shall be binding on subsequent holders of the
25 license until the license is transferred to a new location or
26 until the board enters into a subsequent agreement removing
27 those restrictions. If the application in question involves a
28 location previously licensed by the board, then any restrictions
29 imposed by the board on the previous license at that location
30 shall be binding on the applicant unless the board enters into a

1 new agreement rescinding those restrictions. The board shall
2 require notice to be posted on the property or premises upon
3 which the licensee or proposed licensee will engage in sales of
4 malt or brewed beverages. This notice shall be similar to the
5 notice required of hotel, restaurant and club liquor licensees.

6 Except as hereinafter provided, such license shall authorize
7 the holder thereof to sell or deliver malt or brewed beverages
8 or ready-to-drink cocktails in quantities above specified
9 anywhere within the Commonwealth of Pennsylvania, which, in the
10 case of distributors, have been purchased only from persons
11 licensed under this act as manufacturers or importing
12 distributors, and in the case of importing distributors, have
13 been purchased from manufacturers or persons outside this
14 Commonwealth engaged in the legal sale of malt or brewed
15 beverages or ready-to-drink cocktails or from manufacturers or
16 importing distributors licensed under this article. In the case
17 of an importing distributor, the holder of such a license shall
18 be authorized to store and repackage malt or brewed beverages or
19 ready-to-drink cocktails owned by a manufacturer at a segregated
20 portion of a warehouse or other storage facility authorized by
21 section 441(d) and operated by the importing distributor within
22 its appointed territory and deliver such beverages to another
23 importing distributor who has been granted distribution rights
24 by the manufacturer as provided herein. The importing
25 distributor shall be permitted to receive a fee from the
26 manufacturer for any related storage, repackaging or delivery
27 services. In the case of a bailee for hire hired by a
28 manufacturer, the holder of such a permit shall be authorized:
29 to receive, store and repackage malt or brewed beverages or
30 ready-to-drink cocktails produced by that manufacturer for sale

1 by that manufacturer to importing distributors to whom that
2 manufacturer has given distribution rights pursuant to this
3 subsection or to purchasers outside this Commonwealth for
4 delivery outside this Commonwealth; or to ship to that
5 manufacturer's storage facilities outside this Commonwealth. The
6 bailee for hire shall be permitted to receive a fee from the
7 manufacturer for any related storage, repackaging or delivery
8 services. The bailee for hire shall, as required in Article V of
9 this act, keep complete and accurate records of all
10 transactions, inventory, receipts and shipments and make all
11 records and the licensed areas available for inspection by the
12 board and for the Pennsylvania State Police, Bureau of Liquor
13 Control Enforcement, during normal business hours.

14 Each out of State manufacturer of malt or brewed beverages or
15 ready-to-drink cocktails whose products are sold and delivered
16 in this Commonwealth shall give distributing rights for such
17 products in designated geographical areas to specific importing
18 distributors, and such importing distributor shall not sell or
19 deliver malt or brewed beverages or ready-to-drink cocktails
20 manufactured by the out of State manufacturer to any person
21 issued a license under the provisions of this act whose licensed
22 premises are not located within the geographical area for which
23 he has been given distributing rights by such manufacturer. In
24 addition, the holder of a distributor license may not sell or
25 deliver malt or brewed beverages or ready-to-drink cocktails to
26 any licensee whose licensed premises is located within the
27 designated geographical area granted to an importing distributor
28 other than the importing distributor that sold the malt or
29 brewed beverages or ready-to-drink cocktails to the distributor.
30 If the licensee purchasing the malt or brewed beverages or

1 ready-to-drink cocktails from the distributor license holder
2 holds multiple licenses or operates at more than one location,
3 then the malt or brewed beverages or ready-to-drink cocktails
4 may not be consumed or sold at licensed premises located within
5 the designated geographical area granted to an importing
6 distributor other than the importing distributor that sold the
7 malt or brewed beverages or ready-to-drink cocktails to the
8 distributor. Should a licensee accept the delivery of malt or
9 brewed beverages or ready-to-drink cocktails or transfer malt or
10 brewed beverages or ready-to-drink cocktails in violation of
11 this section, said licensee shall be subject to a suspension of
12 his license for at least thirty days: Provided, That the
13 importing distributor holding such distributing rights for such
14 product shall not sell or deliver the same to another importing
15 distributor without first having entered into a written
16 agreement with the said secondary importing distributor setting
17 forth the terms and conditions under which such products are to
18 be resold within the territory granted to the primary importing
19 distributor by the manufacturer.

20 When a Pennsylvania manufacturer of malt or brewed beverages
21 or ready-to-drink cocktails licensed under this article names or
22 constitutes a distributor or importing distributor as the
23 primary or original supplier of his product, he shall also
24 designate the specific geographical area for which the said
25 distributor or importing distributor is given distributing
26 rights, and such distributor or importing distributor shall not
27 sell or deliver the products of such manufacturer to any person
28 issued a license under the provisions of this act whose licensed
29 premises are not located within the geographical area for which
30 distributing rights have been given to the distributor and

1 importing distributor by the said manufacturer. In addition, the
2 holder of a distributor license may not sell or deliver malt or
3 brewed beverages or ready-to-drink cocktails to a licensee whose
4 licensed premises is located within the designated geographical
5 area granted to an importing distributor other than the
6 importing distributor that sold the malt or brewed beverages or
7 ready-to-drink cocktails to the distributor. If the licensee
8 purchasing the malt or brewed beverages or ready-to-drink
9 cocktails from the distributor license holder holds multiple
10 licenses or operates at more than one location, the malt or
11 brewed beverages or ready-to-drink cocktails may not be consumed
12 or sold at licensed premises located within the designated
13 geographical area granted to an importing distributor other than
14 the importing distributor that sold the malt or brewed beverages
15 or ready-to-drink cocktails to the distributor. If a licensee
16 accepts the delivery of malt or brewed beverages or ready-to-
17 drink cocktails or transfers malt or brewed beverages or ready-
18 to-drink cocktails in violation of this section, the licensee
19 shall be subject to suspension of his license for at least
20 thirty days: Provided, That the importing distributor holding
21 such distributing rights for such product shall not sell or
22 deliver the same to another importing distributor without first
23 having entered into a written agreement with the said secondary
24 importing distributor setting forth the terms and conditions
25 under which such products are to be resold within the territory
26 granted to the primary importing distributor by the
27 manufacturer. Nothing herein contained shall be construed to
28 prevent any manufacturer from authorizing the importing
29 distributor holding the distributing rights for a designated
30 geographical area from selling the products of such manufacturer

1 to another importing distributor also holding distributing
2 rights from the same manufacturer for another geographical area,
3 providing such authority be contained in writing and a copy
4 thereof be given to each of the importing distributors so
5 affected.

6 * * *

7 Section 4. Section 505.4(b)(1) and (c)(1) of the act,
8 amended July 2, 2019 (P.L.324, No.45) and November 21, 2019
9 (P.L.635, No.86), are amended to read:

10 Section 505.4. Limited Distilleries and Distilleries.--

11 (b) (1) The board may issue a limited distillery license
12 that will allow the holder thereof to operate a distillery that
13 shall not exceed production of one hundred thousand (100,000)
14 gallons of distilled liquor per year. The holder of the license
15 may manufacture and sell bottled liquors or ready-to-drink
16 cocktails in original containers produced on the licensed
17 premises to the board, to entities licensed by the board and to
18 the public between the hours of nine o'clock antemeridian and
19 twelve o'clock antemeridian Monday through Saturday and Sunday
20 between the hours of nine o'clock antemeridian through eleven
21 o'clock postmeridian so long as a specific code of distilled
22 liquor, excluding ready-to-drink cocktails, which is listed for
23 sale as a stock item by the board in State liquor stores may not
24 be offered for sale at a licensed limited distillery location at
25 a price which is lower than that charged by the board and under
26 such conditions and regulations as the board may enforce. The
27 holder of a limited distillery license may not sell a product or
28 a substantially similar product which is listed for sale as a
29 stock item by the board in State Liquor Stores to a licensee at
30 a price which is lower than that charged by the board and under

1 such conditions and regulations as the board may enforce. The
2 holder of a limited distillery license may also sell wine,
3 alcoholic cider and fermented fruit beverages produced by a
4 licensed limited winery, liquor or ready-to-drink cocktails
5 produced by a licensed distillery or limited distillery and malt
6 or brewed beverages produced by a licensed brewery for on-
7 premises consumption. The combined sales of wine, malt or brewed
8 beverages and liquor or ready-to-drink cocktails produced by
9 another licensed distillery or limited distillery may not, on a
10 yearly basis, exceed fifty per centum of the on-premises sales
11 of the limited distillery's own sales of liquor or ready-to-
12 drink cocktails for the preceding calendar year: however, if a
13 limited distillery did not operate for an entire calendar year
14 during the preceding year, then its combined sales of wine, malt
15 or brewed beverages and liquor or ready-to-drink cocktails
16 produced by another licensed distillery or limited distillery
17 may not, on a yearly basis, exceed fifty per centum of the on-
18 premises sales of the limited distillery's own liquor or ready-
19 to-drink cocktails for that year.

20 * * *

21 (c) (1) The holder of a distillery license as issued under
22 section 505 may sell bottled liquors or ready-to-drink cocktails
23 in original containers produced on the licensed premises to the
24 board, to entities licensed by the board and to the public
25 between the hours of nine o'clock antemeridian and twelve
26 o'clock antemeridian Monday through Saturday and Sunday between
27 the hours of nine o'clock antemeridian through eleven o'clock
28 postmeridian so long as a specific code of distilled liquor or
29 ready-to-drink cocktail which is listed for sale as a stock item
30 by the board in State liquor stores may not be offered for sale

1 at a licensed distillery location at a price which is lower than
2 that charged by the board and under such conditions and
3 regulations as the board may enforce. The holder of a distillery
4 license may not sell a product or a substantially similar
5 product which is listed for sale as a stock item by the board in
6 State Liquor Stores to a licensee at a price which is lower than
7 that charged by the board and under such conditions and
8 regulations as the board may enforce. The holder of a distillery
9 license may also sell its liquor or ready-to-drink cocktails,
10 wine, alcoholic cider and fermented fruit beverages produced by
11 a licensed limited winery, liquor or ready-to-drink cocktails
12 produced by a licensed distillery or limited distillery and malt
13 or brewed beverages produced by a licensed brewery for on-
14 premises consumption. The combined sales of wine, malt or brewed
15 beverages and liquor or ready-to-drink cocktails produced by
16 another licensed distillery or limited distillery may not, on a
17 yearly basis, exceed fifty per centum of the on-premises sales
18 of the distillery's own sales of liquor or ready-to-drink
19 cocktails for the preceding calendar year: however, if a
20 distillery did not operate for an entire calendar year during
21 the preceding year, then its combined sales of wine, malt or
22 brewed beverages and liquor or ready-to-drink cocktails produced
23 by another licensed distillery or limited distillery may not, on
24 a yearly basis, exceed fifty per centum of the on-premises sales
25 of the distillery's own liquor or ready-to-drink cocktails for
26 that year.

27 * * *

28 Section 5. This act shall take effect in 30 days.