

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 48 Session of 2023

INTRODUCED BY MERCURI, HEFFLEY, JAMES, JOZWIAK, LEADBETER, MOUL AND SMITH, MARCH 7, 2023

REFERRED TO COMMITTEE ON LIQUOR CONTROL, MARCH 7, 2023

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 licenses and regulations and liquor, alcohol and malt and  
 18 brewed beverages, further providing for shipment of wine.

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

21 Section 1. Section 488 of the act of April 12, 1951 (P.L.90,  
 22 No.21), known as the Liquor Code, is amended by adding a  
 23 subsection to read:

24 Section 488. Shipment of Wine.--\* \* \*

25 (m) Notwithstanding any other provision of law, a person  
 26 licensed by the board as a warehouse wine direct to consumer

1 licensee, as provided under this subsection, may ship any wine  
2 offered for sale at wholesale by the board and available to the  
3 warehouse wine direct to consumer licensee from the board for  
4 sale at retail to any resident of this Commonwealth who is at  
5 least twenty-one (21) years of age for the resident's personal  
6 use and not for resale and in compliance with the provisions  
7 this subsection. The following shall apply:

8 (1) A warehouse wine direct to consumer licensee must  
9 purchase all wine for sale to residents of this Commonwealth  
10 from the board under the same terms and conditions of a wine  
11 expanded permit holder under section 415.

12 (2) Prior to issuing a warehouse wine direct to consumer  
13 license, the board shall require an applicant to:

14 (i) File an application with the board.

15 (ii) Pay a licensing fee of ten thousand dollars (\$10,000).

16 (iii) Provide the board with:

17 (A) a copy of the applicant's lease, deed or other written  
18 proof of occupancy for the applicant's proposed warehouse  
19 premises; and

20 (B) a diagram showing the floor plan for a warehouse  
21 premises that is at least forty thousand square feet in area and  
22 which, in addition to storage, contains an office space for the  
23 licensed business.

24 (iv) Provide documentation which evidences that the  
25 applicant has obtained a sales tax license from the Department  
26 of Revenue.

27 (v) Provide the board with any other information that the  
28 board deems necessary and appropriate.

29 (3) A warehouse wine direct to consumer licensee shall:

30 (i) Report to the board each year the total amount of wine

1 shipped to residents of this Commonwealth in the preceding  
2 calendar year.

3 (ii) Permit the board, the enforcement bureau or the  
4 Secretary of Revenue, or their designated representatives, to  
5 enter and inspect the licensed premises and audit the warehouse  
6 direct to consumer licensee records upon request.

7 (iii) Require proof of age of the recipient, in a manner or  
8 format approved by the board for sale by direct wine shipper  
9 licensees, before wine is shipped to a resident of this  
10 Commonwealth.

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

16 (v) Pay to the Department of Revenue all taxes due on sales  
17 to residents of this Commonwealth. The wine delivered under this  
18 subsection shall be subject to only the following:

19 (A) All warehouse direct to consumer licensees shall comply  
20 with the provisions of section 201(f), (k) and (o) of the Tax  
21 Reform Code of 1971, regarding the purchase of wine from a  
22 Pennsylvania Liquor Store.

23 (B) The sale of wine by a warehouse direct to consumer  
24 licensee shall be considered a "purchase at retail" under  
25 section 201(f) of the Tax Reform Code of 1971, a "sale at  
26 retail" under section 201(k) of the Tax Reform Code of 1971 or a  
27 "use" under section 201(o) of the Tax Reform Code of 1971.

28 (C) A warehouse direct to consumer licensee may, when filing  
29 its required returns under Article II of the Tax Reform Code of  
30 1971, request a credit of any taxes paid in accordance with

1 paragraphs (1) and (2). The Department of Revenue may promulgate  
2 rules or regulations and prescribe forms as may be necessary to  
3 implement the provisions of this subsection.

4 (vi) Be prohibited from selling wine to a consumer located  
5 in this Commonwealth at a price that is less than the warehouse  
6 direct to consumer licensee's purchase price for the wine from  
7 the board.

8 (vii) Be prohibited from selling any private label product.

9 (viii) Annually renew its license by paying a renewal fee of  
10 one thousand dollars (\$1,000).

11 (ix) Be prohibited from selling wine to any person or entity  
12 holding any license issued by the board for resale.

13 (x) Be prohibited from selling wine to any walk-in or in-  
14 person consumer at its warehouse premises.

15 (xi) Ship only to account holders of the warehouse direct to  
16 consumer licensee.

17 (xii) Not hold any other license or permit issued by the  
18 board in the warehouse wine direct to consumer licensee's name  
19 or in the name of any subsidiary or related entity, or in the  
20 name of any principal, officer, director, member, manager,  
21 shareholder or general or limited partner.

22 (xiii) Not have or create any interior connection, inside  
23 passage or communication between the licensed warehouse direct  
24 to consumer licensed premises and any other business, whether  
25 licensed or not licensed.

26 (xiv) Apply for and hold only one warehouse direct to  
27 consumer license for one location in this Commonwealth in the  
28 warehouse wine direct to consumer licensee's name or in the name  
29 of any subsidiary or related entity, or in the name of any  
30 principal, officer, director, member, manager, shareholder or

1 general or limited partner.

2 (xv) Be prohibited from transferring its warehouse direct to  
3 consumer license to any successor owner of the licensed business  
4 and any successor shall be required to obtain a new warehouse  
5 direct to consumer license.

6 (xvi) Be prohibited from selling any product other than wine  
7 and wine gift baskets, including foodstuffs contained in wine  
8 gift baskets, wine-related glassware, wine bottle openers and  
9 other items ancillary to the sale and consumption of wine.

10 (xvii) Not be required to obtain a bailee for hire permit  
11 for its warehouse premises, nor a transporter for hire permit  
12 for vehicles used by the warehouse wine direct to consumer  
13 licensee to transport wine to and from a board warehouse and the  
14 warehouse direct to consumer licensee's licensed warehouse  
15 premises. The privileges of other permits shall be included in  
16 the warehouse direct to consumer license.

17 (xviii) Ship wine to unlicensed retail customers in this  
18 Commonwealth only by way of a common carrier and may not ship  
19 wine to purchasers in any vehicle owned or leased by the  
20 warehouse wine direct to consumer licensee in its own name or in  
21 the name of any subsidiary or related entity, or in the name of  
22 any principal, officer, director, member, manager, shareholder  
23 or general or limited partner of the licensee, and the common  
24 carrier shall be contractually obligated to the warehouse direct  
25 to consumer licensee to check the recipient's identification and  
26 proof of age prior to delivery and refrain from delivering a  
27 package if no person of demonstrated proper age is present to  
28 receive the package.

29 (4) Any person who resells wine obtained under this section  
30 commits a misdemeanor of the second degree. A person convicted

1 of selling or offering to sell any wine in violation of this  
2 section shall, in addition to any other penalty prescribed by  
3 law, be sentenced to pay a fine of four dollars (\$4) per fluid  
4 ounce for each container of wine found on the premises where the  
5 sale was made or attempted. The amount of fine per container  
6 shall be based on the capacity of the container when full,  
7 whether or not it is full at the time of sale or attempted sale.  
8 All wine found on the premises shall be confiscated.

9 (5) The board may promulgate rules and regulations necessary  
10 to implement and enforce the provisions of this section.

11 (6) The board shall submit annual reports to the  
12 Appropriations Committee of the Senate, the Law and Justice  
13 Committee of the Senate, the Appropriations Committee of the  
14 House of Representatives and the Liquor Control Committee of the  
15 House of Representatives summarizing the number of warehouse  
16 wine direct to consumer licenses issued by the board and the  
17 quantity of wine sold by warehouse wine direct to consumer  
18 licensee pursuant to this section.

19 (7) Receipts from the tax under this section shall be  
20 deposited into the General Fund.

21 (8) Deliveries made under this section shall only be made by  
22 common carriers holding transporter for hire permits. The  
23 warehouse wine direct to consumer licensee and common carrier  
24 with a transporter for hire permit which makes deliveries under  
25 this section shall:

26 (i) keep records as required under section 512, as required  
27 for the direct shipment of wine; and

28 (ii) permit the board and the enforcement bureau, or their  
29 designated representatives, to inspect the records under section  
30 513.

1 Section 2. This act shall take effect in 60 days.