

No. 2019-45

AN ACT

HB 131

Amending the act of April 12, 1951 (P.L.90, No.21), entitled "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," in preliminary provisions, further providing for definitions; in licenses and regulations and liquor, alcohol and malt and brewed beverages, further providing for wine and spirits auction permits, for malt and brewed beverages manufacturers', distributors' and importing distributors' licenses, for breweries and for rights of municipalities preserved; in distilleries, wineries, bonded warehouses, bailees for hire and transporters for hire, further providing for limited wineries, for distilleries and for records to be kept; in miscellaneous provisions, further providing for construction and applicability; and abrogating regulations.

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

Section 1. The definition of "alcoholic cider" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, is amended and the section is amended by adding a definition to read:

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

\* \* \*

"Alcoholic cider" shall mean a beverage which may contain carbonation in an amount not to exceed six and four tenths grams per liter, produced through alcoholic fermentation [of any fruit or fruit juice], *which is primarily derived from apples, apple juice concentrate and water or pears, pear juice concentrate and water*, consisting of at least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

\* \* \*

*"Fermented fruit beverage" shall mean a beverage which may contain carbonation in an amount not to exceed six and four tenths grams per liter, produced through alcoholic fermentation of fruit, fruit juice, fruit juice concentrate and water with or without flavorings, consisting of at*

*least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale not as a wine, a wine product or a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.*

\* \* \*

Section 2. Section 408.12(g) and (i) of the act are amended to read:

Section 408.12. Wine and Spirits Auction Permits.—\* \* \*

(g) Any wine and spirits sold under this section shall be purchased from a Pennsylvania Liquor Store, a Pennsylvania limited winery, limited distillery or any seller authorized to sell wine or spirits by the bottle or case in this Commonwealth or shall be donated by a person **[who is neither a licensee nor a permittee]** who has legally acquired the wine or spirits and legally possesses it in this Commonwealth. *If the donated wine or spirits is from a location outside of this Commonwealth, the wine or spirits may be imported as a gift and subject to the procedures and fees imposed by the board.*

\* \* \*

(i) **[The]** *If the wine or spirits is purchased from an entity other than the board, the permittee shall be responsible for paying to the board an amount equal to all taxes which would have been paid on such wine or spirits if it had been purchased from a Pennsylvania Liquor Store, together with a processing fee to be determined by the board.*

\* \* \*

Section 3. Section 431 of the act is amended by adding a subsection to read:

Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.—\* \* \*

(g) (1) *Any nonalcoholic malt or brewed beverage produced by an out-of-State manufacturer of malt or brewed beverages or a Pennsylvania manufacturer of malt or brewed beverages which has designated an importing distributor pursuant to this section shall be distributed in accordance with the provisions of this section notwithstanding that it is not a malt or brewed beverage as defined in section 102.*

(2) *For the purposes of this subsection, "nonalcoholic malt or brewed beverage" means any beverage intended to be marketed or sold as nonalcoholic beer having at least a trace amount of alcohol content but which does not contain one-half of one per centum (0.5%)<sup>1</sup> or more alcohol by volume.*

Section 4. Section 446(a)(2) of the act is amended to read:

Section 446. Breweries.—(a) Holders of a brewery license may:

\* \* \*

(2) Operate a restaurant or brewery pub on the licensed premises under such conditions and regulations as the board may enforce: Provided, however, That sales on Sunday may be made irrespective of the volume of food sales if the licensed premises are at a public venue location. The holder

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<sup>1</sup>contain one-half per centum (0.5%) in enrolled bill.

of a brewery license may sell wines **[and]**, alcoholic cider *and fermented fruit beverages* produced by the holder of a limited winery license, malt or brewed beverages produced by a manufacturer licensed by the board and liquor produced by a limited distillery or distillery licensed by the board: Provided, however, That said wines, malt or brewed beverages produced by another manufacturer and liquor must be consumed at the licensed premises. In addition, the combined sales of wine, malt or brewed beverages produced by another manufacturer and liquor may not, on a yearly basis, exceed fifty per centum (50%) of the on-premises sales of the brewery's own malt or brewed beverages for the preceding calendar year: however, if a brewery did not operate for an entire calendar year during the preceding year, then its combined sales of wine, malt or brewed beverages produced by another manufacturer and liquor may not, on a yearly basis, exceed fifty per centum (50%) of the on-premises sales of the brewery's own malt or brewed beverages for that year.

\* \* \*

Section 5. Section 493.1 of the act is amended by adding a subsection to read:

Section 493.1 Rights of Municipalities Preserved.—\* \* \*

*(e) (1) Notwithstanding any other provision of law to the contrary, the holder of a limited winery license that is located in a class 2A through 8 county may use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, does not exceed 75 decibels beyond the licensee's property line.*

*(2) The provisions of subsection (a) shall only apply:*

*(i) From ten o'clock antemeridian until eight o'clock postmeridian on every day except Fridays and Saturdays; and*

*(ii) From ten o'clock antemeridian until ten o'clock postmeridian on Fridays or Saturdays.*

*(3) Nothing in this section may be construed to limit the rights of a municipality under subsection (a).*

Section 6. Sections 505.2(a) and (b), 505.4 heading, (b)(1) and (8) and (c)(1), 512 and 1001 of the act are amended to read:

Section 505.2. Limited Wineries.—(a) In the interest of promoting tourism and recreational development in Pennsylvania, holders of a limited winery license may:

(1) Produce *and sell* alcoholic ciders, *fermented fruit beverages*, mead, wines and wine coolers, subject to the exceptions provided under this section, only from an agricultural commodity grown in Pennsylvania.

(2) Sell alcoholic cider, *fermented fruit beverages*, mead, wine and wine coolers produced by the limited winery or purchased in bulk in bond from another Pennsylvania limited winery on the licensed premises, under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, importing distributor, distributor, hotel, restaurant, club and public service liquor licensees, and to Pennsylvania winery licensees: Provided, That a limited winery shall not, in any calendar year, purchase alcoholic cider, *fermented fruit beverages*, mead or wine produced by other limited wineries in an amount in excess of fifty per

centum of the alcoholic cider, *fermented fruit beverages*, mead or wine produced by the purchasing limited winery in the preceding calendar year. In addition, the holder of a limited winery license may purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process. Such wine may be sold in bottles bearing the purchasing limited winery's label or the producing limited winery's label. Such wines, if sold by the board, may be sold by the producing limited winery to the purchasing limited winery at a price lower than the price charged by the board.

(2.1) Notwithstanding any other provision of this act or law to the contrary, only ship wine in accordance with the provisions of section 488.

(3) Separately or in conjunction with other limited wineries, sell alcoholic cider, *fermented fruit beverages*, mead, wine and wine coolers produced by the limited winery on no more than five (5) board-approved locations other than the licensed premises, with no bottling or production requirement at those additional board-approved locations and under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and public service liquor licensees. If two or more limited wineries apply to operate an additional board-approved location in conjunction with each other, the wineries need only have one board-approved manager for the location, need only pay one application fee and need not designate specific or distinct areas for each winery's licensed area. Each limited winery must file an application for such an additional board-approved location, and such location shall count as one of the five permitted for each limited winery. Each limited winery is responsible for keeping only its own complete records. A limited winery may be cited for a violation of the recordkeeping requirements of sections 512 and 513 pertaining to its own records only.

(4) At the discretion of the board, obtain a special permit to participate in alcoholic cider, *fermented fruit beverage*, mead, wine and food expositions off the licensed premises. A special permit shall be issued upon proper application and payment of a fee of thirty dollars (\$30) per day for each day of permitted use, not to exceed thirty (30) consecutive days. The total number of days for all the special permits may not exceed one hundred (100) days in any calendar year. A special permit shall entitle the holder to engage in the sale by the glass, by the bottle or in case lots of alcoholic cider, *fermented fruit beverages*, mead or wine produced by the permittee under the authority of a limited winery license. Holders of special permits may provide tasting samples of wines in individual portions not to exceed one fluid ounce. Samples at alcoholic cider, *fermented fruit beverage*, mead, wine and food expositions may be sold or offered free of charge. Except as provided herein, limited wineries utilizing special permits shall be governed by all applicable provisions of this act as well as by all applicable regulations or conditions adopted by the board.

For the purposes of this clause, "alcoholic cider, *fermented fruit beverage*, mead, wine and food expositions" are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders, *fermented fruit beverages*, mead

and wines in conjunction with suitable food displays, demonstrations and sales. Alcoholic cider, *fermented fruit beverage*, mead, wine and food expositions may also include activities other than alcoholic cider, *fermented fruit beverage*, mead, wine and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets.

(4.1) At the discretion of the board, obtain a farmers market permit. The permit shall entitle the holder to participate in more than one farmers market at any given time and an unlimited number throughout the year and sell alcoholic cider, *fermented fruit beverages*, mead or wine produced under the authority of the underlying limited winery license by the bottle or in case lots. Samples not to exceed one fluid ounce per brand of mead or wine may be offered free of charge. A farmers market permit shall be issued upon proper application and payment of an annual fee of two hundred fifty dollars (\$250). A permit holder may participate in more than one farmers market at any given time. Sales by permit holders shall take place during the standard hours of operation of the farmers market. Written notice of the date, times and location the permit is to be used shall be provided by the permit holder to the enforcement bureau at least two (2) weeks prior to the event. Except as provided in this subsection, limited wineries utilizing farmers market permits shall be governed by all applicable provisions of this act as well as by all applicable regulations adopted by the board.

(5) Do either of the following:

(i) Apply for and hold a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license to sell for consumption at the restaurant or limited winery on the licensed winery premises, liquor, wine and malt or brewed beverages regardless of the place of manufacture under the same conditions and regulations as any other hotel liquor license, restaurant liquor license or malt and brewed beverages retail license.

(ii) Apply for and hold a restaurant liquor license for use at one of the additional board-approved locations referenced under clause (3), as long as such location does not serve as an additional board-approved location for any other manufacturer.

(6) (i) Secure a permit from the board to allow the holder of a limited winery license to use up to twenty-five per centum permitted fruit, not wine, in the current year's production. Each permit is valid only for the calendar year in which it is issued.

(ii) The fee for a permit to import and use permitted fruit shall be in an amount to be determined by the board.

(iii) The purpose of this section is to increase the productivity of limited wineries while at the same time protecting the integrity and unique characteristics of wine produced from fruit primarily grown in this Commonwealth. Prevailing climatic conditions have a significant impact on the character of the fruit. Accordingly, "permitted fruit" shall mean fruit grown or juice derived from fruit grown within three hundred fifty (350) miles of the winery.

(iv) The department is authorized to promulgate regulations requiring the filing of periodic reports by limited wineries to ensure compliance with the provisions of this section.

(6.1) Sell food for consumption on or off the licensed premises and at the limited winery's additional board-approved locations and sell by the glass, at the licensed premises and at the limited winery's additional board-approved locations, wine, mead **[and]**, alcoholic ciders **and fermented fruit beverages** that may otherwise be sold by the bottle. In addition, the holder of a limited winery license may sell for consumption on the licensed premises and at the limited winery's additional board-approved locations, liquor produced by a licensed distillery or limited distillery, wine **[and]**, alcoholic cider **and fermented fruit beverages** produced by another limited winery and malt or brewed beverages produced by a licensed brewery. The combined sales of wine **[and]**, alcoholic cider **and fermented fruit beverages** produced by another limited winery, malt or brewed beverages and liquor may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited winery's own sales of wine **[and]**, alcoholic cider **and fermented fruit beverages** for the preceding calendar year: however, if a limited winery did not operate for an entire calendar year during the preceding year, then its combined sales of wine and alcohol produced by another limited winery, malt or brewed beverages and liquor may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited winery's own wine **[and]**, alcoholic cider **and fermented fruit beverages** for that year.

(6.2) Sell wine- or liquor-scented candles acquired or produced by the limited winery.

(6.3) Sell alcoholic cider, **fermented fruit beverages**, mead, wine and wine coolers only between the hours of nine o'clock antemeridian and eleven o'clock postmeridian. A limited winery also may request approval from the board to extend sales hours in individual locations at other times during the year or beyond the limits set forth in this clause. The request shall be made in writing to the board's Office of the Chief Counsel and shall detail the exact locations where sales hours are proposed to be extended, the proposed hours and dates of extended operation and the reason for the proposed extended hours.

(6.4) Store alcoholic cider, **fermented fruit beverages**, mead, wine and wine coolers produced by the limited winery at no more than two (2) board-approved locations other than the licensed premises and those premises referenced in clause (3) pertaining to the five (5) board-approved locations for the sale of wine, with no bottling or production requirement at those additional locations and under such conditions and regulations as the board may enforce. If two (2) or more businesses will operate out of the same storage facility, the limited winery must designate specific and distinct areas for its storage. The limited winery's designated storage area must be secured and no one other than the licensee and his employees may be allowed access to the storage area. No board-approved manager will be necessary for the storage facility. The limited winery must fill out an application for such an additional board-approved storage location, and such location shall count as one of the two permitted for each limited winery. The limited winery is responsible for keeping only its own complete records. A limited winery may be cited for a violation of the recordkeeping requirements of sections 512 and 513 pertaining to its own records only.

(b) The total production of alcoholic ciders, *fermented fruit beverages*, mead, wine and wine coolers by a limited winery may not exceed two hundred thousand (200,000) gallons per year.

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Section 505.4. *Limited Distilleries and Distilleries*.—\* \* \*

(b) (1) The board may issue a limited distillery license that will allow the holder thereof to operate a distillery that shall not exceed production of one hundred thousand (100,000) gallons of distilled liquor per year. The holder of the license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and eleven o'clock postmeridian so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores may not be offered for sale at a licensed limited distillery location at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a limited distillery license may not sell a product or a substantially similar product which is listed for sale as a stock item by the board in State Liquor Stores to a licensee at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a limited distillery license may also sell wine [and], alcoholic cider *and fermented fruit beverages* produced by a licensed limited winery, liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery for on-premises consumption. The combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited distillery's own sales of liquor for the preceding calendar year: however, if a limited distillery did not operate for an entire calendar year during the preceding year, then its combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the limited distillery's own liquor for that year.

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(8) At the discretion of the board the holder of a limited distillery license may obtain a special permit to participate in [alcoholic cider,] liquor and food expositions off the licensed premises. A special permit shall be issued upon proper application and payment of a fee of thirty dollars (\$30) per day for each day of permitted use, not to exceed thirty (30) consecutive days. The total number of days for all the special permits may not exceed one hundred (100) days in any calendar year. A special permit shall entitle the holder to engage in the sale by the glass, by the bottle or in case lots of liquor produced by the permittee under the authority of a limited distillery license. Holders of special permits may provide tasting samples of liquor in individual portions not to exceed one and one-half (1.5) fluid ounces. Samples at [alcoholic cider,] liquor and food expositions may be sold or offered free of charge. Except as provided in this clause, limited distilleries utilizing special permits shall be governed by all applicable provisions of this act as well as by all applicable regulations or conditions adopted by the board. For the purposes of this clause, ["alcoholic cider, liquor] "liquor

and food expositions" are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced **[alcoholic ciders and]** liquors in conjunction with suitable food displays, demonstrations and sales. **[Alcoholic cider, liquor] Liquor** and food expositions may also include activities other than **[alcoholic cider,]** liquor and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets.

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(c) (1) The holder of a distillery license as issued under section 505 may sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and eleven o'clock postmeridian so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores may not be offered for sale at a licensed distillery location at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a distillery license may not sell a product or a substantially similar product which is listed for sale as a stock item by the board in State Liquor Stores to a licensee at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce. The holder of a distillery license may also sell its liquor, wine **[and]**, alcoholic cider **and fermented fruit beverages** produced by a licensed limited winery, liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery for on-premises consumption. The combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the distillery's own sales of liquor for the preceding calendar year: however, if a distillery did not operate for an entire calendar year during the preceding year, then its combined sales of wine, malt or brewed beverages and liquor produced by another licensed distillery or limited distillery may not, on a yearly basis, exceed fifty per centum of the on-premises sales of the distillery's own liquor for that year.

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Section 512. Records To Be Kept.—Every person holding a license issued under the provisions of this article shall keep on the licensed premises daily permanent records which shall show, (a) the quantities of any alcohol or liquor manufactured, produced, distilled, developed, denatured, redistilled, recovered, reused, stored in bond, stored as bailee for hire, received or used in the process of manufacture by him, and of all other material used in manufacturing or developing any alcohol or liquor; (b) the sales or other disposition of any alcohol, liquor or malt or brewed beverages if covered by said license; (c) the quantities thereof, if any, stored in bond, stored for hire, or transported for hire by or for the licensee; and (d) the names and addresses of the purchasers or other recipients thereof: Provided, however, That persons holding licenses issued under the provisions of this article for the transportation for hire of any alcohol, liquor or malt or brewed beverages shall not be required to keep the above records, but shall keep



daily permanent records showing the names and addresses of the persons from whom any alcohol, liquor or malt or brewed beverage was received and to whom delivered, and such other permanent records as the board shall prescribe[.]: ***Provided, however, That a sales invoice may not be required for purchases made at a limited winery by a private individual unless the purchase is for greater than 16 liters in a single transaction.***

Section 1001. Construction and Applicability.—(a) Except as provided in subsection (b), unless the context clearly indicates otherwise, a reference to "malt or brewed beverages" in a statute shall be construed to include alcoholic cider ***and fermented fruit beverages.***

(b) Regardless of context, a reference to "malt or brewed beverages" in Article XX of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," shall be construed to include alcoholic cider ***and fermented fruit beverages.***

(c) Except as provided in subsection (d), unless the context clearly indicates otherwise, a reference to "wine" in a statute shall be construed to exclude alcoholic cider ***and fermented fruit beverages.***

(d) Regardless of context, a reference to "wine" in the act of December 5, 1933 (Sp.Sess., P.L.38, No.6), known as the "Spirituous and Vinous Liquor Tax Law," shall be construed to exclude alcoholic cider ***and fermented fruit beverages.***

Section 7. The provisions of 40 Pa. Code § 5.103(b) are abrogated insofar as they are inconsistent with the amendment of section 512 of the act.

Section 8. This act shall take effect as follows:

- (1) The amendment or addition of sections 493.1(e) and 512 shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 2019

TOM WOLF