



ADVISORY NOTICE NO. 22

TRANSPORTER-FOR-HIRE LICENSES MARCH 11, 2015

TO: All Transporter-For-Hire Licensees and Retail Licensees (except Club licensees)

In order to clarify the existing law regarding transporter-for-hire licensees, in particular as these licenses relate to retail licensees, the Board is issuing this Advisory Notice. The provisions of this Advisory Notice are effective immediately. Please govern your operations accordingly.

1. *May a retail licensee transport malt and brewed beverages without a transporter-for-hire license?*

No. Most retail licensees are permitted to sell malt or brewed beverages for off premises consumption. However, these retail licensees are not permitted to transport the malt or brewed beverages to consumers. In order to deliver malt or brewed beverages, retail licensees must obtain a transporter-for-hire license, in addition to the retail license. [40 Pa. Code § 9.11].

2. *Are there different types of transporter-for-hire-licenses?*

Yes. There are three (3) types of transporter-for-hire licenses issued by the Board:

- Class A, which permits the holder to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth.
- Class B, which permits the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth.
- Class C, which is a fleet license that permits the holder to engage in the commercial transportation of liquor parcels within the Commonwealth.

[40 Pa. Code 9.11].

3. *How do you obtain a transporter-for-hire-license?*

The application forms for transporter-for-hire licenses are available from Licensing at (717) 783-8250, or via the Internet at www.lcb.state.pa.us; once there, click on "For Licensees," followed by "Applications and Forms," and select "PLCB-1350." If you have questions about completing the form(s), you should contact Licensing directly at the above-listed number.

4. *May a retail licensee that holds a transporter-for-hire license accept payment for malt or brewed beverages at the time of delivery?*

No. The sale of malt or brewed beverages is a transaction between the retail licensee and the consumer that must be fully completed on the retail licensee's premises. A retail licensee that holds a transporter-for-hire license cannot accept payment for the malt and brewed beverages at the time of delivery.

5. *May a retail licensee that holds a transporter-for-hire license charge a delivery fee at the time of delivery?*

Yes, as long as the delivery fee does not include payment for the malt or brewed beverages.

6. May a retail licensee that holds a transporter-for-hire license deliver food and/or non-alcoholic beverages at the same time that it delivers malt or brewed beverages?

Yes. However, it is not required that food and/or non-alcoholic beverages accompany a delivery of malt or brewed beverages. Further, the food and/or non-alcoholic beverages must have been ordered from the retail licensee prior to delivery to the consumer.

7. May a retail licensee that holds a transporter-for-hire license deliver food and/or non-alcoholic beverages that have not been pre-ordered by the consumer?

No. A licensed transporter is not permitted to transport malt or brewed beverages in the same vehicle at the same time as “a commodity that is hawked or peddled by the licensee.” [40 Pa. Code § 9.92(b)]. In other words, a transporter-for-hire licensee may not sell or attempt to sell other items, which have not been pre-ordered by a customer, from the same vehicle used to transport malt or brewed beverages. For example, this prohibits a licensed transporter from using its vehicle as a food truck. However, it would be permissible to deliver orders containing food, malt or brewed beverages, or both to different customers in the same trip.

8. May a retail licensee that holds a transporter-for-hire license transport malt or brewed beverages from a distributor, importing distributor, or brewery to its retail licensed premises?

No. Any malt or brewed beverages purchased by a retail licensee must be delivered by the distributor, importing distributor, or brewery from which they were purchased, or by a person or entity holding a transporter-for-hire license. However, because transporter-for-hire licensees may only transport malt or brewed beverages that they do not own, a retail licensee holding a transporter-for-hire license in the same name cannot transport malt or brewed beverages that it has purchased.

9. Is there a limit to the amount of malt or brewed beverages that a retail licensee holding a transporter-for-hire license may transport at one (1) time?

No. While a retail licensee is limited to sales of malt or brewed beverages for off-premises consumption in quantities of one hundred ninety-two (192) fluid ounces or less of malt or brewed beverages in a single sale to one (1) person [47 P.S. § 4-407], a transporter-for-hire licensee does not have this limitation. Therefore, a retail licensee that holds a transporter-for-hire license may transport and/or deliver multiple orders to one (1) or more consumers or locations. Retail licensees should keep records demonstrating that they have not exceeded the one hundred ninety-two (192) fluid ounces limitation.

10. Are there any restrictions on the hours that a retail licensee that holds a transporter-for-hire license may make deliveries?

No. Although a retail licensee is limited in the hours it may sell malt or brewed beverages, a retail licensee that holds a transporter-for-hire license has no such limitation on hours of delivery. However, the actual sales of those malt or brewed beverages must still take place by 2:00 a.m. [47 P.S. §§ 4-406(a), 4-492(5), 4-492.1].

11. May a retail licensee that holds a transporter-for-hire license make deliveries to any location within the Commonwealth?

Yes.

12. Must the vehicles of a retail licensee that holds a transporter-for-hire license bear the retail licensee's name, address, and license number?

Yes. Licensees transporting malt or brewed beverages are required to identify the vehicles used with the transporter-for-hire licensee's name, address, and license number painted or affixed on each side of the vehicle in letters no smaller than two (2) inches in height. [47 P.S. § 4-492(9)]. Magnetic signs are permissible.

13. Do the prohibitions in the Liquor Code on sales and service to minors and visibly intoxicated persons apply to deliveries by a retail licensee that holds a transporter-for-hire license?

Yes.

14. Does a person or entity that owns multiple retail licenses need a separate transporter-for-hire license for each licensed establishment?

No, one (1) transporter-for-hire license is sufficient.

15. What is the minimum age of a person delivering malt or brewed beverages for a retail licensee that holds a transporter-for-hire license?

Twenty-one (21). The Crimes Code prohibits any minor who is under twenty-one (21) from intentionally transporting liquor or malt or brewed beverages. [18 Pa. C.S. § 6308(a)]. Therefore, no one under twenty-one (21) years of age may deliver malt or brewed beverages for a transporter-for-hire licensee. Although there is an exception for employees of distributor and importing distributor licensees, there is no such exception for other licensees such as transporters-for-hire or retail licensees. [47 P.S. § 4-493(27)].

16. Who may transport on behalf of a transporter-for-hire licensee and what vehicles may be used for the delivery?

The Board's Regulations currently state that a transporter-for-hire licensee must own or lease the vehicle used or, in the alternative, contract with drivers employed by unlicensed transporters to complete the delivery. [40 Pa. Code § 9.28]. However, this is not intended to prevent an employee of a transporter-for-hire licensee from using a vehicle owned or leased by the employee to deliver on behalf of the transporter. Therefore, a transporter-for-hire licensee is permitted, subject to the limitations of its license, to transport malt or brewed beverages in vehicles owned or leased by the licensee or its employees, so long as there is written evidence that the driver is either an employee or contractor of the licensed transporter. A regulatory change is forthcoming to clarify this policy. It would be permissible for a retail licensee holding a transporter-for-hire license to use modes of transportation other than vehicles, as long as they are properly identified. (see question 12).

17. May a transporter-for-hire operate at a retail licensee's establishment?

If the transporter-for-hire license is in the name of the retail licensee, it may conduct its business out of the licensed premises. Additional Board approval is not necessary.

If the transporter-for-hire license is **not** in the name of the retail licensee, it may **not** conduct its business out of the licensed premises. [40 Pa. Code § 3.52(a)].

18. If a transporter-for-hire delivers malt or brewed beverages from a retail licensee to a minor or visibility intoxicated patron, which entity, the retail licensee or the entity that holds the transporter-for-hire, is subject to citation?

The sale and/or delivery of alcohol to a minor or visibly intoxicated person is a violation of section 493(1) of the Liquor Code. The retail licensee **may** be subject to an administrative citation under section 471 of the Liquor Code and, if the citation is affirmed, would be subject to a fine of between (in most cases) \$1000.00 and \$5000.00, a license suspension, the revocation of the license, or a combination of these penalties.

The retail licensee as the holder of the transporter-for-hire **may** be subject to citation under section 514 of the Liquor Code and, if the citation is affirmed, would be subject to a license suspension or revocation. Further, under section 516 of the Liquor Code, an Administrative Law Judge may convert the license suspension to a fine at the rate of \$25.00 per each day of license suspension.

Further, if the retail licensee's license or its transporter-for-hire license is revoked, it will be ineligible for any license for three (3) years and the licensed premises may not be licensed for one (1) year.

19. What records must be kept by a retail licensee that holds a transporter-for-hire license?

Section 512 of the Liquor Code requires a transporter-for-hire to 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. Section 9.13 of the Board's Regulations requires that such records be maintained for two (2) years, that the recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data, that the entries be verifiable by supporting documentation including original documents, and that licensee maintain copies of all federally-required documents, in addition to the state-required documents. Section 9.21 of the Board's Regulations requires the transporter-for-hire to maintain in each vehicle, documentation indicating the name and address of the consignee and the name and address of the consignor for alcoholic beverages being transported.

In addition to the existing record-keeping requirements, the transporter-for-hire licensee must maintain a delivery invoice, bill of lading, or similar document for each delivery to ensure delivery was made to purchaser of the malt or brewed beverages.

The records listed above should be kept separately from the retail licensee's records for its retail operation.

20. Is a transporter-for-hire licensee required to check ID upon delivery?

Yes. The transporter-for-hire licensee is required to check the identification of the individual accepting the delivery and it must maintain records to document the verification of IDs.

As always, licensees who desire legal opinions on specific questions should send those requests, in writing, to:

Faith S. Diehl
Chief Counsel
Office of Chief Counsel
PENNSYLVANIA LIQUOR CONTROL BOARD
401 Northwest Office Building
Harrisburg, PA 17124-0001

BY ORDER OF:
THE PENNSYLVANIA LIQUOR CONTROL BOARD

A handwritten signature in black ink, reading "John A. Stark". The signature is written in a cursive style with a large initial "J" and "S".

JOHN STARK
SECRETARY OF THE BOARD