

## **RULES WITH REGARD TO SHIPPING ALCOHOL INTO PENNSYLVANIA FROM OTHER STATES**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only.*

It is unlawful for any person to import alcohol into Pennsylvania except as permitted within the Liquor Code and the PLCB's Regulations. 47 P.S. § 4-491(8), (11). The law provides that:

It shall be unlawful [f]or any person, other than the board or the holder of a sacramental wine license, an importer's license or a direct wine shipper's license, to import any liquor whatsoever into this Commonwealth.

47 P.S. § 4-491 (11).

Therefore, unless the recipient of the liquor falls within one of the four exceptions provided in section 491(11) – the PLCB, a sacramental wine licensee, an importer, or a direct wine shipper – such importation of liquor is illegal.

Act 39 of 2016 (Act 39) created a direct wine shipper license (DWS license). 47 P.S. §§ 1-102, 4-488(a), 4-491(11). This license is available to any person licensed by the PLCB, another state, or another country as a *wine producer*. Limited wineries are specifically included in the definition of direct wine shipper. 47 P.S. §§ 1-102, 4-488(a).

The DWS license permits its holder to ship a maximum of thirty-six cases of wine, up to nine liters per case, in any calendar year, to a Pennsylvania resident for such resident's personal use. 47 P.S. § 4-488(b).

To obtain a DWS license, the applicant must file a written application, pay a \$250 fee, provide a copy of the applicant's current producer license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and other information as required by the PLCB. 47 P.S. § 4-488(c.1).

A DWS license holder must do all of the following:

- Report to the PLCB the total wine shipped in a calendar year.
- Permit auditing of the DWS license records by the PLCB, the BLCE, or the Department of Revenue.

- Require proof of age of the recipient of wine before the wine is shipped.
- Label boxes with the phrase “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.”
- Pay sales tax and pay a \$2.50 per gallon wine excise tax to the Department of Revenue.
- Pay an annual renewal fee of \$250. 47 P.S. § 4-488(d), (j).

Any person who resells wine obtained from a DWS licensee commits a second degree misdemeanor and is subject to a fine of \$4 per fluid ounce for each container of wine found on the premises where the sale was made (in addition to other criminal penalties). This prohibition on reselling wine does not apply to licensees who acquire wine from licensed limited wineries acting under the authority of their limited winery licenses. 47 P.S. § 4-488(f).

All wine ordered under this section must be transported by a licensed transporter-for-hire. 47 P.S. § 4-488(l). Limited wineries must now obtain this license to directly ship wine to a Pennsylvania resident’s home. 47 P.S. § 4-488(b), 505.2(a)(2.1).

In addition, liquors and wines not listed for regular sale through the PLCB’s wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the PLCB) via special liquor order (“SLO”). 47 P.S. § 3-305. SLOs may be placed at any of the PLCB’s wine and spirits stores, or via the Bureau of Product Selection at (800) 332-7522, option # 1. SLOs placed by a consumer must be shipped to a wine and spirits store operated by the PLCB and may be either for personal use or, if purchased by a PLCB licensee, for resale in any licensed establishment. Such liquor is subject to taxes, a markup of 10% of the product, freight/shipping charges, and a handling fee.

Act 39 also allows the PLCB to accept SLOs placed by licensed importers or licensed vendors on behalf of customers, in addition to accepting SLOs placed directly by customers. However, delivery may only occur after payment has been forwarded to the PLCB and the PLCB has authorized delivery of the order. Liability for SLOs placed by licensed importers or licensed vendors on behalf of customers remain with the importer or vendor until the time of delivery to the customer.

The PLCB is permitted to refuse to process, or prohibit the processing of, SLOs for items that are substantially similar to items that appear on its monthly price lists, or if the PLCB believes demand for the items warrants them being made available generally. The PLCB has the discretion to determine the amount and manner for which any such item will be made available.

With regard to the direct shipment of wine, please be aware of the United States Supreme Court's decision in Granholm v. Heald, 544 U.S. 460, 125 S.Ct. 1885 161 L.Ed.2d 796 (2005). In Granholm, the Court declared unconstitutional state laws in New York and Michigan that prohibited residents of those states from buying directly from out-of-state wineries. The Court held that where a state permits in-state wineries to ship their products directly to consumers, while requiring out-of-state wineries to ship only through the three-tier system, such differential treatment violates the Commerce Clause of the United States Constitution.

A lawsuit, Cutner v. Newman, 398 F. Supp. 2d 389 (E.D. 2005), was filed in federal court challenging Pennsylvania's laws on direct shipping. On November 9, 2005, the United States District Court for the Eastern District of Pennsylvania issued an order enjoining enforcement of Pennsylvania's laws prohibiting out-of-state wineries from selling and shipping directly to consumers, hotels, and restaurants in a manner which treats in-state wineries differently than out-of-state wineries.

Thereafter, the Attorney General's office advised the PLCB that the provisions of the Liquor Code and PLCB's Regulations which, at the time, permitted in-state wineries to deliver directly to Pennsylvania licensees and consumers, while prohibiting out-of-state wineries from doing so, were unconstitutional. Therefore, the PLCB took measures to temporarily remedy the differential treatment until the Pennsylvania General Assembly has the opportunity to provide a legislative remedy addressing the issues raised by the Granholm case.

Regarding the importation of malt or brewed beverages, Act 166 of 2016 (Act 166) created a direct malt or brewed beverage shipper (DBS) license to allow out-of-state shipment of malt and brewed beverages to Pennsylvania residents. 47 P.S. § 4-448(a). Act 166 limited who may obtain this new license to any person licensed by another state or another country as a wholesaler or retailer of malt or brewed beverages. 47 P.S. § 4-448(b).

A DBS license permits its holder to ship a maximum of 192 fluid ounces per month of any malt or brewed beverage upon the order of any Pennsylvania resident twenty-one years old or older for such resident's personal use (not for resale). No more than 96 fluid ounces of a specific brand of malt or brewed beverages may be shipped to any one Pennsylvania resident within one calendar year. 47 P.S. § 4-448(b).

To obtain a DBS license, the applicant must file an application, pay a \$250 fee, provide a copy of the applicant's current alcohol beverage license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and provide other information as required by the PLCB. 47 P.S. § 4-448(c).

A DBS license holder must do all of the following:

- Report to the PLCB the total malt or brewed beverages shipped in a calendar year.
- Permit auditing of the DBS license records by the PLCB, the Pennsylvania State Police Bureau of Liquor Control Enforcement, or the Department of Revenue.
- Submit to the jurisdiction of the PLCB, any other Commonwealth agency, and the courts of this Commonwealth for purposes of enforcement.
- Require proof of age of the recipient of malt or brewed beverages in a manner approved by the PLCB before malt or brewed beverages are shipped.
- Label boxes with the phrase “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.”
- Pay all taxes due on sales to the Department of Revenue (the amount of taxes shall be calculated as if the sales were in this Commonwealth at the locations where delivery was made).
- Pay an annual renewal fee of \$250. 47 P.S. § 4-448(d).

Any person who resells malt or brewed beverages obtained from a DBS licensee commits a second degree misdemeanor and is subject to a fine of \$4.00 per fluid ounce for each container of malt or brewed beverages found on the premises where the sale was made, in addition to other criminal penalties. 47 P.S. § 4-448(e).

All malt or brewed beverages ordered under this section must be transported by a licensed transporter-for-hire. 47 P.S. § 4-448(i).

Malt or brewed beverages sold by a DBS license holder will not be subject to the three-tier system, territorial rights, and brand registration requirements found in sections 431 and 445 of the Liquor Code. 47 P.S. § 4-448(j), (k).