

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1649 Session of
2011

INTRODUCED BY MUSTIO, TAYLOR, EVERETT, F. KELLER, KILLION, KOTIK
AND PICKETT, JUNE 8, 2011

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JUNE 8, 2011

AN ACT

1 Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as
2 reenacted, "An act relating to alcoholic liquors, alcohol and
3 malt and brewed beverages; amending, revising, consolidating
4 and 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,"
17 further providing for general powers of board, for sales by
18 Pennsylvania liquor stores, for sales by liquor licensees and
19 restrictions and for malt and brewed beverages
20 manufacturers', distributors' and importing distributors'
21 licenses; providing for wine and spirits sales permits for
22 malt or brewed beverage distributors, for application for
23 wine and spirits sales permits for malt and brewed beverage
24 distributor licensees and for enhanced distributor's license,
25 fees, privileges and restrictions; and further providing for
26 distributors' and importing distributors' restrictions on
27 sales, storage, etc., for interlocking business prohibited
28 and for unlawful acts relative to malt or brewed beverages
29 and licensees.

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

1 Section 1. Section 207 of the act of April 12, 1951 (P.L.90,
2 No.21), known as the Liquor Code, reenacted and amended June 29,
3 1987 (P.L.32, No.14), is amended by adding a subsection to read:

4 Section 207. General Powers of Board.--Under this act, the
5 board shall have the power and its duty shall be:

6 * * *

7 (1) To determine, in conjunction with the chairman and
8 minority chairman of the Appropriations Committee of the Senate
9 and the chairman and minority chairman of the Appropriations
10 Committee of the House of Representatives, a five-year plan for
11 returning profits from the sale of wine and spirits to the
12 General Fund. The board shall meet with the chairman and
13 minority chairman of the Appropriations Committee of the Senate
14 and the chairman and minority chairman of the Appropriations
15 Committee of the House of Representatives once each year to
16 first determine a five-year plan for returning profits to the
17 General Fund and each consecutive year to revisit this plan to
18 ensure its viability.

19 Section 2. Section 305(b) of the act, amended July 6, 2005
20 (P.L.135, No.39), is amended to read:

21 Section 305. Sales by Pennsylvania Liquor Stores.--* * *

22 (b) Every Pennsylvania Liquor Store shall sell liquors at
23 wholesale to hotels, restaurants, clubs, wine and spirits
24 permittees, and railroad, pullman and steamship companies
25 licensed under this act; and, under the regulations of the
26 board, to pharmacists duly licensed and registered under the
27 laws of the Commonwealth, and to manufacturing pharmacists, and
28 to reputable hospitals approved by the board, or chemists. Sales
29 to licensees shall be made at a price that includes a discount
30 of [ten] twelve per centum from the retail price and the board

1 shall not charge the licensees a markup. The board may sell to
2 registered pharmacists only such liquors as conform to the
3 Pharmacopoeia of the United States, the National Formulary, or
4 the American Homeopathic Pharmacopoeia. The board may sell at
5 special prices under the regulations of the board, to United
6 States Armed Forces facilities which are located on United
7 States Armed Forces installations and are conducted pursuant to
8 the authority and regulations of the United States Armed Forces.
9 All other sales by such stores shall be at retail. A person
10 entitled to purchase liquor at wholesale prices may purchase the
11 liquor at any Pennsylvania Liquor Store upon tendering cash,
12 check or credit card for the full amount of the purchase. For
13 this purpose, the board shall issue a discount card to each
14 licensee identifying such licensee as a person authorized to
15 purchase liquor at wholesale prices. Such discount card shall be
16 retained by the licensee. The board may contract through the
17 Commonwealth bidding process for delivery to wholesale licensees
18 at the expense of the licensee receiving the delivery.

19 * * *

20 Section 3. Section 406 of the act is amended by adding a
21 subsection to read:

22 Section 406. Sales by Liquor Licensees; Restrictions.--* * *

23 (f) (1) The holder of a hotel license or a restaurant
24 license may sell up to five bottles of wine for consumption off
25 the licensed premises so long as the bottles of wine remain
26 sealed.

27 (2) For purposes of this subsection, "wine" shall have the
28 meaning given to it under section 488(i).

29 Section 4. Section 431(b) of the act, amended December 8,
30 2004 (P.L.1810, No.239), is amended and the section is amended

1 by adding a subsection to read:

2 Section 431. Malt and Brewed Beverages Manufacturers',
3 Distributors' and Importing Distributors' Licenses.--* * *

4 (b) (1) The board shall issue to any reputable person who
5 applies therefor, and pays the license fee hereinafter
6 prescribed, a distributor's or importing distributor's license
7 for the place which such person desires to maintain for the sale
8 of malt or brewed beverages, not for consumption on the premises
9 where sold, and in quantities of not less than a case or
10 original containers containing one hundred twenty-eight ounces
11 or more which may be sold separately as prepared for the market
12 by the manufacturer at the place of manufacture. The board shall
13 have the discretion to refuse a license to any person or to any
14 corporation, partnership or association if such person, or any
15 officer or director of such corporation, or any member or
16 partner of such partnership or association shall have been
17 convicted or found guilty of a felony within a period of five
18 years immediately preceding the date of application for the said
19 license: And provided further, That, in the case of any new
20 license or the transfer of any license to a new location, the
21 board may, in its discretion, grant or refuse such new license
22 or transfer if such place proposed to be licensed is within
23 three hundred feet of any church, hospital, charitable
24 institution, school or public playground, or if such new license
25 or transfer is applied for a place which is within two hundred
26 feet of any other premises which is licensed by the board: And
27 provided further, That the board shall refuse any application
28 for a new license or the transfer of any license to a new
29 location if, in the board's opinion, such new license or
30 transfer would be detrimental to the welfare, health, peace and

1 morals of the inhabitants of the neighborhood within a radius of
2 five hundred feet of the place proposed to be licensed. The
3 board shall refuse any application for a new license or the
4 transfer of any license to a location where the sale of liquid
5 fuels or oil is conducted. The board may enter into an agreement
6 with the applicant concerning additional restrictions on the
7 license in question. If the board and the applicant enter into
8 such an agreement, such agreement shall be binding on the
9 applicant. Failure by the applicant to adhere to the agreement
10 will be sufficient cause to form the basis for a citation under
11 section 471 and for the nonrenewal of the license under section
12 470. If the board enters into an agreement with an applicant
13 concerning additional restrictions, those restrictions shall be
14 binding on subsequent holders of the license until the license
15 is transferred to a new location or until the board enters into
16 a subsequent agreement removing those restrictions. If the
17 application in question involves a location previously licensed
18 by the board, then any restrictions imposed by the board on the
19 previous license at that location shall be binding on the
20 applicant unless the board enters into a new agreement
21 rescinding those restrictions. The board shall require notice to
22 be posted on the property or premises upon which the licensee or
23 proposed licensee will engage in sales of malt or brewed
24 beverages. This notice shall be similar to the notice required
25 of hotel, restaurant and club liquor licensees.

26 (2) Except as hereinafter provided, such license shall
27 authorize the holder thereof to sell or deliver malt or brewed
28 beverages in quantities above specified anywhere within the
29 Commonwealth of Pennsylvania, which, in the case of
30 distributors, have been purchased only from persons licensed

1 under this act as manufacturers or importing distributors, and
2 in the case of importing distributors, have been purchased from
3 manufacturers or persons outside this Commonwealth engaged in
4 the legal sale of malt or brewed beverages or from manufacturers
5 or importing distributors licensed under this article. Should a
6 distributor licensee apply for and receive a wine and spirits
7 permit under section 431.2, that distributor will also be
8 allowed to sell wine and spirits on the same premises where malt
9 or brewed beverages are sold and to deliver such wine and
10 spirits anywhere within this Commonwealth. In the case of an
11 importing distributor, the holder of such a license shall be
12 authorized to store and repackage malt or brewed beverages owned
13 by a manufacturer at a segregated portion of a warehouse or
14 other storage facility authorized by section 441(d) and operated
15 by the importing distributor within its appointed territory and
16 deliver such beverages to another importing distributor who has
17 been granted distribution rights by the manufacturer as provided
18 herein. The importing distributor shall be permitted to receive
19 a fee from the manufacturer for any related storage, repackaging
20 or delivery services. In the case of a bailee for hire hired by
21 a manufacturer, the holder of such a permit shall be authorized:
22 to receive, store and repackage malt or brewed beverages
23 produced by that manufacturer for sale by that manufacturer to
24 importing distributors to whom that manufacturer has given
25 distribution rights pursuant to this subsection or to purchasers
26 outside this Commonwealth for delivery outside this
27 Commonwealth; or to ship to that manufacturer's storage
28 facilities outside this Commonwealth. The bailee for hire shall
29 be permitted to receive a fee from the manufacturer for any
30 related storage, repackaging or delivery services. The bailee

1 for hire shall, as required in Article V of this act, keep
2 complete and accurate records of all transactions, inventory,
3 receipts and shipments and make all records and the licensed
4 areas available for inspection by the board and for the
5 Pennsylvania State Police, Bureau of Liquor Control Enforcement,
6 during normal business hours.

7 (3) Each out of State manufacturer of malt or brewed
8 beverages whose products are sold and delivered in this
9 Commonwealth shall give distributing rights for such products in
10 designated geographical areas to specific importing
11 distributors, and such importing distributor shall not sell or
12 deliver malt or brewed beverages manufactured by the out of
13 State manufacturer to any person issued a license under the
14 provisions of this act whose licensed premises are not located
15 within the geographical area for which he has been given
16 distributing rights by such manufacturer. Should a licensee
17 accept the delivery of such malt or brewed beverages in
18 violation of this section, said licensee shall be subject to a
19 suspension of his license for at least thirty days: Provided,
20 That the importing distributor holding such distributing rights
21 for such product shall not sell or deliver the same to another
22 importing distributor without first having entered into a
23 written agreement with the said secondary importing distributor
24 setting forth the terms and conditions under which such products
25 are to be resold within the territory granted to the primary
26 importing distributor by the manufacturer.

27 (4) When a Pennsylvania manufacturer of malt or brewed
28 beverages licensed under this article names or constitutes a
29 distributor or importing distributor as the primary or original
30 supplier of his product, he shall also designate the specific

1 geographical area for which the said distributor or importing
2 distributor is given distributing rights, and such distributor
3 or importing distributor shall not sell or deliver the products
4 of such manufacturer to any person issued a license under the
5 provisions of this act whose licensed premises are not located
6 within the geographical area for which distributing rights have
7 been given to the distributor and importing distributor by the
8 said manufacturer: Provided, That the importing distributor
9 holding such distributing rights for such product shall not sell
10 or deliver the same to another importing distributor without
11 first having entered into a written agreement with the said
12 secondary importing distributor setting forth the terms and
13 conditions under which such products are to be resold within the
14 territory granted to the primary importing distributor by the
15 manufacturer. Nothing herein contained shall be construed to
16 prevent any manufacturer from authorizing the importing
17 distributor holding the distributing rights for a designated
18 geographical area from selling the products of such manufacturer
19 to another importing distributor also holding distributing
20 rights from the same manufacturer for another geographical area,
21 providing such authority be contained in writing and a copy
22 thereof be given to each of the importing distributors so
23 affected.

24 * * *

25 (b.2) In the case of an importing distributor, upon making
26 application and payment of a fifty million dollar (\$50,000,000)
27 fee to the board, to receive an enhanced importing distributor
28 license that will allow the holder all the privileges of an
29 importing distributor in addition to the authority to buy,
30 import and have in its possession for sale to enhanced

distributor licensees under section 431.4, at wholesale, wine and spirits.

* * *

Section 5. The act is amended by adding sections to read:

Section 431.2. Wine and Spirits Sales Permits for Malt and Brewed Beverage Distributors.--(a) The board shall issue to any licensed distributor of good repute who applies therefor, and pays the license fee hereinafter prescribed, a wine and spirits sales permit for the same place the licensee maintains for the sale of malt and brewed beverages. This permit shall grant the licensee the ability to sell for consumption off the licensed premises wine and liquor. The application for such permit shall be in such form and contain such information as the board shall require. All such permits shall be granted for a permit period of one year. The board may enter into an agreement with the applicant concerning additional restrictions on the permit in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant. Failure by the applicant to adhere to the agreement shall be sufficient cause to form the basis for a citation under section 471 and for nonrenewal of the permit under section 470. If the board enters into an agreement with an applicant concerning additional restrictions, those restrictions shall be binding until the board enters into a subsequent agreement removing those restrictions. The board shall require notice to be posted on the property or premises upon which the licensee or proposed licensee will engage in sales of wine and liquor. This notice shall be similar to the notice required of hotel, restaurant and club liquor licensees.

(b) The fee for such permit shall be ten thousand dollars

1 (\$10,000) per year due at the time the licensee makes
2 application for such permit to the board.

3 (c) If a distributor applies for and receives a wine and
4 spirits sales permit for three consecutive years, in the fourth
5 year the distributor shall, at the time of renewal of the
6 license, register for an enhanced distributor license pursuant
7 to section 431.4.

8 Section 431.3. Application for Wine and Spirits Sales
9 Permits for Malt and Brewed Beverage Distributor Licensees.--

10 Application for a wine and spirits sales permit shall contain or
11 have attached thereto the following information and statements:

12 (1) The name and residence of the applicant and how long the
13 applicant has resided there, and if an association, partnership
14 or corporation, the residences of the members, officers and
15 directors for the period of two years next preceding the date of
16 such application.

17 (2) The particular place for which the permit is desired and
18 a detailed description thereof. The description, information and
19 plans referred to in this paragraph shall show the premises at
20 the time the application is made and shall show any alterations
21 proposed to be made thereto. No physical alterations,
22 improvements or changes shall be required to be made to any
23 distributor, nor shall any new building for any such purpose be
24 required to be constructed, until approval of the application
25 for the permit of the board. After approval of the application,
26 the permittee shall make the physical alterations, improvements
27 and changes to the licensed premises in the manner specified by
28 the board at the time of approval. The licensee shall not
29 transact any business under the permit until the board has
30 approved the completed physical alterations, improvements and

changes of the licensed premises as conforming to the
specifications required by the board at the time of issuance of
the permit and the board is satisfied that the premises meet the
requirements for a wine and spirits sales permit as set forth in
this act. The board may require that all such alterations or
conformity to definition be completed within six months from the
time of issuance of the permit. Failure to comply with these
requirements shall be considered cause for revocation of the
license. No such permit shall be transferrable.

(3) Place of birth of applicant and, if a naturalized
citizen, where and when naturalized, and, if a corporation
organized or registered under the laws of this Commonwealth,
when and where incorporated, with the names and addresses of
each officer and director, all of whom must be citizens of the
United States. If the application is for a wine and spirits
sales permit and the applicant thereof is a corporation, the
application shall also contain a statement of facts showing the
qualifications of the corporation, as required in this act,
together with the names and addresses of all stockholders.

(4) Name of owner of premises and the owner's residence.

(5) That the applicant is not or, in case of a partnership
or association, that the members or partners are not and, in the
case of a corporation, that the officers and directors are not,
in any manner pecuniarily interested, either directly or
indirectly, in the profits of any other class of business
regulated by this article, except as otherwise permitted in this
act.

(6) That applicant is the only person in any manner
pecuniarily interested in the business for which a wine and
spirits sales permit is sought and that no other person shall be

1 in any manner pecuniarily interested therein during the
2 continuance of the permit, except as otherwise permitted in this
3 act.

4 (7) Whether the applicant or, in case of a partnership or
5 association, any member or partner thereof, or, in case of a
6 corporation, any officer or director thereof, has during the
7 three years immediately preceding the date of the application
8 had a license for the sale of malt or brewed beverages or
9 spirituous and vinous liquors revoked or has during the same
10 period been convicted of any criminal offense, and if so, a
11 detailed history thereof.

12 (8) A full description of that portion of the premises for
13 which the permit is sought.

14 (9) The application must be verified by affidavit of
15 applicant and, if any false statement is intentionally made in
16 any part of the application, the affiant shall be deemed guilty
17 of a misdemeanor and, upon conviction, shall be subject to the
18 penalties provided by this article.

19 Section 431.4. Enhanced Distributor's License; Fees;
20 Privileges; Restrictions.--(a) Notwithstanding any other
21 provision of this act to the contrary, the holder of a
22 distributor license who has also applied for and been granted a
23 wine and spirits sales permit for three consecutive years under
24 section 431.2 shall convert the distributor license to an
25 enhanced distributor license by registering with the board as an
26 enhanced distributor licensee and paying a one-time conversion
27 fee of fifty thousand dollars (\$50,000).

28 (b) Enhanced distributor licensees shall pay a biannual
29 renewal fee of five thousand dollars (\$5,000) to the board. If
30 the renewal fee is not timely paid then the enhanced distributor

1 license shall be suspended until such time as the fee is paid.

2 (c) Notwithstanding any other provision of this act to the
3 contrary, an enhanced distributor licensee may sell wine and
4 spirits not for consumption on the premises where sold and malt
5 or brewed beverages, not for consumption on the premises where
6 sold and in quantities of not less than a case or original
7 containers containing one hundred twenty-eight ounces or more
8 which may be sold separately as prepared for the market by the
9 manufacturer at the place of manufacture.

10 (d) Enhanced distributor licenses shall be subject to the
11 same quota as distributor licenses and may be transferred from
12 person-to-person or place-to-place, or both.

13 (e) If the holder of an enhanced distributor license has
14 been cited and found in violation of section 493(1), insofar as
15 it relates to sales to minors or sales to visibly intoxicated
16 persons, the administrative law judge may suspend the license or
17 impose a fine of not less than five thousand dollars (\$5,000)
18 nor more than twenty thousand dollars (\$20,000).

19 Section 6. Section 441 of the act is amended by adding a
20 subsection to read:

21 Section 441. Distributors' and Importing Distributors'
22 Restrictions on Sales, Storage, Etc.--* * *

23 (h) No distributor shall engage in the sale of wine and
24 spirits without first obtaining a wine and spirits sales permit
25 as provided for in section 431.2 or an enhanced distributor
26 license as provided for in section 431.4 of this act. Sales of
27 wine and spirits may only be made on those premises licensed for
28 the sale of malt or brewed beverages sold in quantities greater
29 than or equal to a case.

30 Section 7. Sections 443(a) and (b) of the act, amended May

1 31, 1996 (P.L.312, No.49), are amended to read:

2 Section 443. Interlocking Business Prohibited.--(a) No
3 manufacturer of malt or brewed beverages and no officer or
4 director of any such manufacturer shall at the same time be a
5 distributor, importing distributor or retail dispenser, or an
6 officer, director or stockholder or creditor of any distributor,
7 importing distributor or retail dispenser, nor, except as
8 hereinafter provided, be the owner, proprietor or lessor of any
9 place for which a license has been issued for any importing
10 distributor, distributor or retail dispenser, or for which a
11 hotel, restaurant or club liquor license has been issued:
12 Provided, however, That a holder of a manufacturer's license
13 under section 431(a) who is eligible to operate a brewery pub
14 under section 446(2) or a limited winery as provided for under
15 section 505.2 may also hold and operate under a hotel liquor
16 license, a restaurant liquor license or a malt and brewed
17 beverages retail license on the manufacturer's or limited
18 winery's licensed premises. The hotel liquor license or
19 restaurant liquor license or the malt and brewed beverages
20 retail license shall be acquired by the manufacturer or limited
21 winery subject to section 461 and shall satisfy all requirements
22 for each respective license; and, Provided, further, that the
23 holder of a distributor license may also hold and operate a wine
24 and spirits sales permit as provided for under section 431.2(a)
25 on the distributor's licensed premises.

26 (b) No distributor or importing distributor and no officer
27 or director of any distributor or importing distributor shall at
28 the same time be a manufacturer, a retail dispenser or a liquor
29 licensee, or be an officer, director, stockholder or creditor of
30 a manufacturer, a retail dispenser or a liquor licensee, or,

1 directly or indirectly, own any stock of, or have any financial
2 interest in, or be the owner, proprietor or lessor of, any place
3 covered by any other malt or brewed beverage or liquor license,
4 except as provided for in section 431.2(a) or 431.4(a).

5 * * *

6 Section 8. Section 492(12), (13) and (14) of the act are
7 amended to read:

8 Section 492. Unlawful Acts Relative to Malt or Brewed
9 Beverages and Licensees.--

10 It shall be unlawful--

11 * * *

12 (12) Distributors and Importing Distributors Engaging in
13 Other Business. For any distributor or importing distributor, or
14 his servants, agents or employes, without the approval of the
15 board, and then only in accordance with board regulations, to
16 engage in any other business whatsoever, except the business of
17 distributing malt or brewed beverages. Provided that the holder
18 of a distributor license who is eligible for a wine and spirits
19 sales permit under section 431.2(a) or an enhanced distributor
20 license under section 431.4(a) may engage in the sale of liquor
21 and wine on the licensed premise so long as the licensee meets
22 all of the requirements of that section.

23 [(13) Possession or Storage of Liquor or Alcohol by Certain
24 Licensees. For any distributor, importing distributor or retail
25 dispenser, or his servants, agents or employes, to have in his
26 possession, or to permit the storage of on the licensed premises
27 or in any place contiguous or adjacent thereto accessible to the
28 public or used in connection with the operation of the licensed
29 premises, any alcohol or liquor.]

30 (14) Malt or Brewed Beverage Licensees Dealing in Liquor or

1 Alcohol. For any malt or brewed beverage licensee, other than a
2 distributor who holds a wine and spirits sales permit under
3 section 431.2(a) or an enhanced distributor license under
4 section 431.4(a) or a manufacturer, or the servants, agents or
5 employes thereof, to manufacture, import, sell, transport,
6 store, trade or barter in any liquor or alcohol.

7 * * *

8 Section 9. This act shall take effect in 60 days.