

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 963

Session of
1975

INTRODUCED BY BRUNNER, BELLOMINI, ROMANELLI, MILANOVICH,
SALVATORE, CESSAR, SHELTON AND DeMEDIO, APRIL 9, 1975

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 14, 1975

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,"
17 further regulating distributing rights for malt and brewed
18 beverages and providing remedies and penalties.

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

21 Section 1. Section 431, 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 431. Malt and Brewed Beverages Manufacturers',
25 Distributors' and Importing Distributors' Licenses.--* * *

26 (d) All distributing rights as hereinabove required shall be

1 in writing, shall be equitable in their provisions and shall be
2 identical as to terms and conditions with all other distributing
3 rights agreements between the manufacturer giving such agreement
4 and its other importing distributors and distributors, shall not
5 be modified, cancelled, terminated or rescinded by the
6 manufacturer without just cause, and shall contain a provision
7 as follows: "The manufacturer recognizes that the importing
8 distributor and distributor is free to manage his business in
9 the manner the importing distributor and distributor deems best
10 and that this prerogative vests in the importing distributor and
11 distributor the exclusive right to establish a selling price, to
12 select the brands of malt or brewed beverages he wishes to
13 handle and to determine the efforts and resources which the
14 importing distributor and distributor will exert to develop and
15 promote the sale of the manufacturer's products handled by the
16 importing distributor and distributor. However, the manufacturer
17 expects that the importing distributor and distributor will
18 price competitively the products handled by him, devote
19 reasonable effort and resources to the sale of such products and
20 maintain a reasonable sales level." Each franchise shall be sole
21 and exclusive and the entire franchise territory shall be
22 contiguous.

23 The court of common pleas of the county wherein the licensed
24 premises of the importing distributor or distributor are located
25 is hereby vested with jurisdiction and power to enjoin the
26 modification, rescission, cancellation or termination of a
27 franchise or agreement between a manufacturer and an importing
28 distributor or distributor at the instance of such importing
29 distributor or distributor who is or might be adversely affected
30 by such modification, rescission, cancellation or termination,

1 and in granting an injunction the court shall provide that no
2 manufacturer shall supply the customers or territory of the
3 importing distributor or distributor by servicing the territory
4 or customers through other importing distributors or
5 distributors or any other means while the injunction is in
6 effect: Provided, however, That any injunction issued under this
7 subsection shall require the posting of sufficient bond against
8 damages arising from an injunction improvidently granted and a
9 showing that the danger of irrevocable loss or damage is
10 immediate and that during the pendency of such injunction the
11 importing distributor or distributor shall continue to service
12 the accounts of the manufacturer in good faith.

13 Section 2. Section 492 of the act is amended by adding
14 clauses to read:

15 Section 492. Unlawful Acts Relative to Malt or Brewed
16 Beverages and Licensees.--

17 It shall be unlawful--

18 * * *

19 (18) Coercing Entering into Distributing Rights Agreement.

20 For any manufacturer or any officer, agent or representative of
21 any manufacturer to coerce or persuade or attempt to coerce or
22 persuade any person licensed to sell or distribute malt or
23 brewed beverages at wholesale or retail to enter into any
24 contracts or agreements, whether written or oral, or take any
25 other action which will violate or tend to violate any
26 provisions of subsection (b) of section 431 of this act or any
27 of the rules or regulations promulgated by the board pursuant
28 thereto.

29 (19) Modifying or Terminating Distributing Rights Agreement.

30 For any manufacturer or any officer, agent or representative of

1 any manufacturer to modify, cancel, terminate or rescind,
2 without just cause, any distributing rights agreement, and in no
3 event shall any modification, cancellation, termination or
4 rescission of any distributing rights agreement become effective
5 for at least one hundred eighty (180) days after written notice
6 of such cancellation, termination or rescission has been served
7 on the affected party and the board by certified mail, return
8 receipt requested, except by written consent of the parties to
9 the agreement. The notice shall state all the reasons for the
10 intended termination, cancellation or nonrenewal. The franchise
11 shall have one hundred eighty (180) days in which to rectify any
12 claimed deficiency. If deficiency shall be rectified within one
13 hundred eighty (180) days of notice, then the proposed
14 termination, cancellation, or nonrenewal shall be null and void,
15 and with out legal effect. The notice provisions of this section
16 shall not apply if the reason for termination, cancellation, or
17 nonrenewal is insolvency, the occurrence of an assignment for the
18 benefit of creditors, or bankruptcy. Any controversy or claim
19 arising out of or relating to this agreement between importing
20 distributors and distributors and the manufacturer shall be
21 settled by arbitration in the City of Harrisburg, County of
22 Dauphin, and State of Pennsylvania in accordance with the rules,
23 then obtaining, of the American Arbitration Association, and
24 judgment upon the award rendered may be entered in any court
25 having jurisdiction thereof.

26 (20) Interference with Transfer of License, Business or
27 Franchise. For any manufacturer to interfere with or prevent
28 any importing distributor or distributor from selling or
29 transferring his license or business whether before or after
30 notice of modification, cancellation, termination or rescission

1 has been given.