

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1941 Session of
1995

INTRODUCED BY KENNEY, J. TAYLOR, RAYMOND, BOYES, JAROLIN,
CORRIGAN, TIGUE AND VAN HORNE, JUNE 29, 1995

REFERRED TO COMMITTEE ON LIQUOR CONTROL, JUNE 29, 1995

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 establishing the Bureau of Licensing; and further providing
18 for advertising of prices of alcoholic beverages, for
19 distributors' and importing distributors' restrictions on
20 sales of malt or brewed beverages, for Sunday sales of
21 alcoholic beverages and for distribution of malt and brewed
22 beverages.

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

25 Section 1. Sections 104(d) of the act of April 12, 1951
26 (P.L.90, No.21), known as the Liquor Code, reenacted and amended
27 June 29, 1987 (P.L.32, No.14) and amended December 7, 1990

1 (P.L.622, No.160), is amended to read:

2 Section 104. Interpretation of Act.--* * *

3 (d) The provisions of this act are intended to create a
4 system for distribution that shall include the fixing of prices
5 for liquor [and]; alcohol and controls placed on prices for malt
6 and brewed beverages; and controls placed on advertisement of
7 prices of alcoholic beverages, each of which shall be construed
8 as integral to the preservation of the system, without which
9 system the Commonwealth's control of the sale of liquor and
10 alcohol and malt and brewed beverages, and the Commonwealth's
11 promotion of its policy of temperance and responsible conduct
12 with respect to alcoholic beverages, would not be possible.

13 * * *

14 Section 2. The act is amended by adding a section to read:

15 Section 216. Bureau of Licensing.--The board shall establish
16 a Bureau of Licensing. Within the Bureau of Licensing, there
17 shall be established a Division of Malt Beverage Control which
18 shall be responsible for administering, monitoring and actively
19 supervising all aspects of the malt beverage distribution system
20 within this Commonwealth.

21 Section 3. Section 431(d)(2) of the act, added June 22, 1980
22 (P.L.253, No.73), is amended to read:

23 Section 431. Malt and Brewed Beverages Manufacturers',
24 Distributors' and Importing Distributors' Licenses.--* * *

25 (d) * * *

26 (2) After January 1, 1980, no manufacturer shall enter into
27 any agreement with more than one distributor or importing
28 distributor for the purpose of establishing more than one
29 agreement for designated brand or brands of malt or brewed
30 beverages in any one territory. Each franchise territory which

1 is granted by a manufacturer shall be geographically contiguous.
2 All distributors and importing distributors shall maintain
3 sufficient records to evidence compliance of this section. The
4 records shall establish that each and every case of a brand of
5 malt or brewed beverages for which the distributor or importing
6 distributor is assigned was sold, resold, stored, delivered or
7 transported by the distributor or importing distributor, either
8 from a point or to a point within the assigned geographically
9 contiguous territory, to any person or persons, whether such
10 person or persons are licensed by this act or not licensed by
11 this act.

12 * * *

13 Section 4. Section 441 of the act is amended by adding
14 subsections to read:

15 Section 441. Distributors' and Importing Distributors'
16 Restrictions on Sales, Storage, Etc.--* * *

17 (f) Any distributor who purchases malt or brewed beverages
18 directly from any manufacturer and any importing distributor who
19 purchases malt or brewed beverages from any manufacturer,
20 another importing distributor or any person located outside this
21 Commonwealth whose malt or brewed beverages are transported,
22 stored, sold or resold in this Commonwealth may repair damaged
23 cases of such malt or brewed beverages. Such repairs shall be
24 made only under the authority of or under the direction of the
25 manufacturer or person located outside this Commonwealth who
26 registered the brand or brands of malt or brewed beverages in
27 conformity with brand registration provisions within this act.

28 (g) All malt or brewed beverages purchased by a distributor
29 or importing distributor for resale shall be invoiced to the
30 distributor or importing distributor, shall come physically into

1 the possession of such distributor or importing distributor and
2 shall be unloaded into and distributed from the licensed
3 premises of such distributor or importing distributor. The board
4 may act to further define and control the storage and
5 distribution of malt or brewed beverages in conformity with this
6 section and this act.

7 Section 5. Section 447 of the act, added December 7, 1990
8 (P.L.622, No.160), is amended to read:

9 Section 447. Price Changes of Malt and Brewed Beverages.--

10 (a) (1) The purpose of this section is to [regulate the manner
11 in which prices of malt or brewed beverages are changed by the
12 manufacturers, importing distributors and other distributors and
13 other distributors and to provide] effect and promote the intent
14 of the General Assembly, expressed in section 104 of this act
15 and in this section, by regulating the manner in which prices of
16 malt or brewed beverages are changed by a manufacturer,
17 importing distributor and distributor and by providing for the
18 retention and the furnishing of records of price changes by such
19 manufacturers, importing distributors and distributors. By
20 forbidding manufacturers, importing distributors and
21 distributors from providing short-term price discounts, it is
22 the intent of the General Assembly to discourage increased
23 consumption and irresponsible conduct resulting from impulse
24 buying, price promotion or the natural elasticity of demand
25 relative to price.

26 (2) Any manufacturer, importing distributor or distributor
27 [who] which reduces the price on any package of any brand of
28 malt or brewed [beverages] beverage sold for resale within this
29 Commonwealth may further reduce the price at any time, but any
30 reduction shall continue in full force and effect for at least

1 one hundred eighty days from the date on which the last such
2 reduced price becomes effective, except [for the meeting of
3 competition as set forth in subsection (b). However, such
4 reduced price may be increased during such one hundred eighty-
5 day period to reflect any tax increase on malt or brewed
6 beverages.] that price may be increased earlier:

7 (i) to reflect any tax increase on malt or brewed beverages;

8 (ii) in the manner described in subsection (b), if the
9 increase was effected to meet competition; or

10 (iii) with permission of the board granted in the manner
11 described in subsection (c).

12 (3) [If a manufacturer, importing distributor or distributor
13 of malt or brewed beverages lowers the wholesale price on any
14 package of any brand of malt or brewed beverages to one
15 importing distributor or distributor or retail licensee within
16 this Commonwealth, the manufacturer, importing distributor or
17 distributor shall lower the wholesale price on such package of
18 such brand offered or sold to all other importing distributors
19 or distributors or retail licensees within this Commonwealth by
20 a like amount.] Any importing distributor or distributor who
21 lowers the wholesale price on any package of any brand of malt
22 or brewed beverages shall file a notice of the lowered price
23 with the Commonwealth no later than seven days of such change
24 and retain a record of the lowered price for at least two years
25 from the date of filing. [If such manufacturer, importing
26 distributor or distributor, having lowered the wholesale price
27 on a package of a brand pursuant to this section, subsequently
28 raises the wholesale price on such package of such brand to one
29 importing distributor or distributor or retail licensee within
30 this Commonwealth, such manufacturer, importing distributor or

1 distributor shall raise the wholesale price on such package of
2 such brand offered or sold to all other importing distributors
3 or distributors or retail licensees within this Commonwealth by
4 a like amount.]

5 (4) No importing distributor or distributor shall be
6 required by any manufacturer or importing distributor to reduce
7 the resale price of any package of any brand of malt or brewed
8 beverages by an amount greater than the amount by which such
9 manufacturer or importing distributor has reduced the wholesale
10 price on such package of such brand to such importing
11 distributor or distributor.

12 [(5) Every importing distributor and distributor receiving a
13 price reduction on any package of any brand of malt or brewed
14 beverages pursuant to this section shall reduce his price by a
15 like amount to all classes of customers.

16 (6)] (5) Manufacturers [of malt or brewed] beverages shall
17 notify importing distributors and distributors, in writing, of
18 any [price reductions, prices on newly introduced brand or
19 packages and subsequent increases after expiration of one
20 hundred eighty days, if any, at least fifteen days in advance of
21 such price changes.]:

22 (i) price reduction with respect to any malt or brewed
23 beverage;

24 (ii) price of a new brand or package of a malt or brewed
25 beverage; or

26 (iii) price increase subsequent to a price reduction at
27 least fifteen days before such reduced, new or increased price
28 becomes effective.

29 (b) If [a] any manufacturer, importing distributor or
30 distributor has reduced the wholesale price [on] of any package

1 of any brand of malt or brewed beverages, any other
2 manufacturer, importing distributor or distributor may reduce
3 the wholesale price on the same or similar package [of such
4 brand in order to meet competition. Such price reduction shall
5 be no greater than the price reduction being met. All such price
6 reductions to meet competition shall continue in full force and
7 effect for the balance of the one hundred eighty-day period
8 during which the price reduction being met is required to remain
9 in full force and effect.] or brand to meet competition, which
10 reduction shall:

- 11 (1) not exceed the reduction to which it responds; and
12 (2) continue in full force and effect until the earlier of:
13 (i) the one hundred eightieth day after the date on which
14 the reduction to which it responds became effective; or
15 (ii) the lawful rescission of the reduction to which it
16 responds.

17 (c) [Notwithstanding any other provision of this section,
18 the board shall have the authority, upon application by a
19 manufacturer, importing distributor or distributor, to permit
20 such] A manufacturer, importing distributor or distributor [to]
21 may change the price within a time period of less than one
22 hundred eighty days from when the price went into effect [upon
23 an appropriate showing that market conditions warrant a change
24 in price.] if market conditions, or any other good cause,
25 support the change. The manufacturer, importing distributor or
26 distributor shall notify the board within forty-eight hours of
27 the change of such price. The board shall set a hearing date as
28 soon as practicable and shall rule on whether the manufacturer,
29 importing distributor or distributor has made an appropriate
30 showing which supports the price change. If the manufacturer,

1 importing distributor or distributor fails to show good cause,
2 it shall reimburse the difference between the original and
3 increased price to those who purchased the malt or brewed
4 beverage.

5 (d) The board shall monitor the filings deriving from
6 subsection (a)(3) and the applications deriving from subsection
7 (c). The board shall, no less frequently than four times each
8 year, consider at a regularly or specially scheduled meeting the
9 issue of whether the Commonwealth's policy of temperance and
10 responsible conduct with respect to alcoholic beverages is being
11 effected and promoted by this act, including, without
12 limitation, this section and sections 492(18), 493(8), (18), and
13 (22) and 498 of this article and by the board's regulations,
14 including, without limitation, to those regulations restricting
15 retail licensees' discount pricing practices. The board shall,
16 no less frequently than once each year, provide to the General
17 Assembly a report with respect to the board's findings, which
18 report shall contain any statement any board member desires to
19 include and shall contain a summary of the filing and
20 applications deriving from this section.

21 Section 6. Section 492(4) of the act is amended to read:

22 Section 492. Unlawful Acts Relative to Malt or Brewed
23 Beverages and Licensees.--

24 It shall be unlawful--

25 * * *

26 (4) Sunday Sales of Malt or Brewed Beverages by
27 Manufacturers, Importing Distributors or Distributors. For any
28 manufacturer of malt or brewed beverages, importing distributor
29 or distributor, or the servants, agents or employes of the same,
30 to sell[, trade or barter in] malt or brewed beverages to any

1 person or persons not licensed by this act between the hours of
2 twelve o'clock midnight [of any Saturday and two o'clock in the
3 forenoon of the following Monday.] and seven o'clock in the
4 forenoon of any day of the week, and no such sales shall be made
5 to any person or persons not licensed by this act between the
6 hours of twelve o'clock midnight of any Saturday and seven
7 o'clock in the forenoon of the following Monday. Nothing herein
8 shall prohibit any manufacturer of malt or brewed beverages,
9 importing distributor or distributor, or the servants, agents or
10 employes of the same from selling, bartering or trading in malt
11 or brewed beverages at any time with any person licensed by this
12 act. Notwithstanding any other provision of this section,
13 manufacturers of malt or brewed beverages, importing
14 distributors or distributors, or the servants, agents or
15 employes of the same may deliver malt or brewed beverages to any
16 person not licensed by this act on any Sunday by prior
17 arrangement only, if the malt or brewed beverages were purchased
18 and paid for in full at the licensed premises of such
19 manufacturer, importing distributor or distributor at least
20 twenty-four hours in advance of the delivery and with each sale
21 being in excess of two hundred fifty dollars (\$250), excluding
22 any deposits or credits. The board may require certain records
23 to be kept regarding such sales and may act to further limit and
24 control such sales to persons not licensed by this act as are
25 described in this act.

26 * * *

27 Section 7. This act shall take effect in 60 days.