

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2257

Session of
1995

INTRODUCED BY CHADWICK, DECEMBER 7, 1995

AS RE-REPORTED FROM COMMITTEE ON LIQUOR CONTROL, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 10, 1996

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 providing for an investigative unit; 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 prices of malt or
21 brewed beverages, for Sunday sales of alcoholic beverages,
22 for distribution of malt and brewed beverages, for forfeiture
23 of property illegally possessed or used, FOR MINIMUM
24 QUANTITIES SELLABLE and for motor vehicle licenses to be
25 revoked.

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26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 Section 1. Sections 104(d) of the act of April 12, 1951

1 (P.L.90, No.21), known as the Liquor Code, reenacted and amended
2 June 29, 1987 (P.L.32, No.14) and amended December 7, 1990
3 (P.L.622, No.160), is amended to read:

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

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

15 * * *

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

17 Section 216. Investigative Unit.--(a) The board shall
18 establish an investigative unit that shall be responsible for
19 implementing and monitoring compliance with the provisions of
20 and regulations made under this act relating to malt or brewed
21 beverages and the malt or brewed beverage industry.

22 (b) The investigative unit shall, among other things:

23 (1) handle notifications concerning price introductions and
24 changes;

25 (2) receive and make recommendations to the board concerning
26 applications to rescind price discounts;

27 (3) provide assistance to the board concerning reports and
28 investigations the board desires or is required to provide;

29 (4) handle applications for brand registration; and

30 (5) handle copies of franchise or territorial agreements

1 submitted by importing distributors.

2 (c) Management of the unit shall be vested in a director,
3 who shall be assisted by other personnel as the board deems
4 necessary. The director shall report to the board secretary.

5 Section 3. Section 431(d)(2) of the act is amended to read:

6 Section 431. Malt and Brewed Beverages Manufacturers',
7 Distributors' and Importing Distributors' Licenses.--* * *

8 (d) * * *

9 (2) After January 1, 1980, no manufacturer shall enter into
10 any agreement with more than one distributor or importing
11 distributor for the purpose of establishing more than one
12 agreement for designated brand or brands of malt or brewed
13 beverages in any one territory. Each franchise territory which
14 is granted by a manufacturer shall be geographically contiguous.
15 All importing distributors shall maintain sufficient records to
16 evidence compliance of this section. With regard to any
17 territorial distribution authority granted to an importing
18 distributor by a manufacturer of malt or brewed beverages after
19 January 1, 1996, the records shall establish that each and every
20 case of a brand of malt or brewed beverages for which the
21 importing distributor is assigned was sold, resold, stored,
22 delivered or transported by the importing distributor, either
23 from a point or to a point within the assigned geographically
24 contiguous territory, to any person or persons, whether such
25 person or persons are licensed by this act or not licensed by
26 this act.

27 * * *

28 ~~Section 4. Section 441(a) of the act is amended and the~~ <—
29 ~~section is amended by adding subsections to read:~~

30 SECTION 4. SECTION 440 OF THE ACT, AMENDED AUGUST 17, 1965 <—

1 (P.L.346, NO.182), IS AMENDED TO READ:

2 SECTION 440. SALES BY MANUFACTURERS OF MALT OR BREWED
3 BEVERAGES; MINIMUM QUANTITIES.--NO MANUFACTURER SHALL SELL ANY
4 MALT OR BREWED BEVERAGES FOR CONSUMPTION ON THE PREMISES WHERE
5 SOLD, NOR SELL OR DELIVER ANY SUCH MALT OR BREWED BEVERAGES IN
6 OTHER THAN ORIGINAL CONTAINERS APPROVED AS TO CAPACITY BY THE
7 BOARD, NOR IN QUANTITIES OF LESS THAN A CASE OF TWENTY-FOUR
8 CONTAINERS, EACH CONTAINER HOLDING SEVEN FLUID OUNCES OR MORE,
9 OR A CASE OF FIFTEEN OR MORE CONTAINERS, EACH CONTAINER HOLDING
10 TWENTY-TWO FLUID OUNCES OR MORE, OR A CASE OF TWELVE CONTAINERS,
11 EACH CONTAINER HOLDING TWENTY-FOUR FLUID OUNCES OR MORE, EXCEPT
12 ORIGINAL CONTAINERS CONTAINING ONE HUNDRED TWENTY-EIGHT OUNCES
13 OR MORE WHICH MAY BE SOLD SEPARATELY; NOR SHALL ANY MANUFACTURER
14 MAINTAIN OR OPERATE WITHIN THE COMMONWEALTH ANY PLACE OR PLACES
15 OTHER THAN THE PLACE OR PLACES COVERED BY HIS OR ITS LICENSE
16 WHERE MALT OR BREWED BEVERAGES ARE SOLD OR WHERE ORDERS ARE
17 TAKEN.

18 SECTION 5. SECTION 441(A) AND (B) OF THE ACT, AMENDED AUGUST
19 17, 1965 (P.L.346, NO.182), ARE AMENDED AND THE SECTION IS
20 AMENDED BY ADDING SUBSECTIONS TO READ:

21 Section 441. Distributors' and Importing Distributors'
22 Restrictions on Sales, Storage, Etc.--(a) No distributor or
23 importing distributor shall purchase, receive or resell any malt
24 or brewed beverages except:

25 (1) in the original containers as prepared for the market by
26 the manufacturer at the place of manufacture[.]; or
27 (2) in a case of identical containers repackaged in the
28 manner described by subsection (f).

29 (B) NO DISTRIBUTOR OR IMPORTING DISTRIBUTOR SHALL SELL ANY
30 MALT OR BREWED BEVERAGES IN QUANTITIES OF LESS THAN A CASE OF

<—

1 TWENTY-FOUR CONTAINERS, EACH CONTAINER HOLDING SEVEN FLUID
2 OUNCES OR MORE, OR A CASE OF FIFTEEN OR MORE CONTAINERS, EACH
3 CONTAINER HOLDING TWENTY-TWO FLUID OUNCES OR MORE, OR A CASE OF
4 TWELVE CONTAINERS, EACH CONTAINER HOLDING TWENTY-FOUR FLUID
5 OUNCES OR MORE, EXCEPT ORIGINAL CONTAINERS CONTAINING ONE
6 HUNDRED TWENTY-EIGHT OUNCES OR MORE WHICH MAY BE SOLD
7 SEPARATELY: PROVIDED, THAT NO MALT OR BREWED BEVERAGES SOLD OR
8 DELIVERED SHALL BE CONSUMED UPON THE PREMISES OF THE DISTRIBUTOR
9 OR IMPORTING DISTRIBUTOR, OR IN ANY PLACE PROVIDED FOR SUCH
10 PURPOSE BY SUCH DISTRIBUTOR OR IMPORTING DISTRIBUTOR.

11 * * *

12 (f) (1) To salvage one or more saleable cases from one or
13 more damaged cases, cartons or packages of malt or brewed
14 beverages, a distributor or importing distributor may repackage,
15 consequent to inadvertent damage, and sell a case, carton or
16 package of identical units of malt or brewed beverages.

17 (2) Repackaging is permissible only to the extent made
18 necessary by inadvertent damage. Repackaging not consequent to
19 damage is prohibited.

20 (3) For purposes of this subsection, "identical units" are
21 undamaged bottles or cans of identical brand, package and
22 volume.

23 (g) All malt or brewed beverages purchased by an importing
24 distributor from a Pennsylvania manufacturer of malt or brewed
25 beverages or from any person located outside this Commonwealth
26 for resale shall be invoiced to the importing distributor, shall
27 come physically into the possession of such importing
28 distributor and shall be unloaded into and distributed from the
29 licensed premises of such importing distributor. The board may
30 act to further define and control the storage and distribution

1 of malt or brewed beverages in conformity with this section and
2 this act.

3 Section 5 6. Section 447 of the act, added December 7, 1990 <—
4 (P.L.622, No.160), is amended to read:

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

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

22 (2) Any manufacturer, importing distributor or distributor
23 [who] which reduces the price on any package of any brand of
24 malt or brewed [beverages] beverage sold for resale within this
25 Commonwealth may further reduce the price at any time, but any
26 reduction shall continue in full force and effect for at least
27 one hundred [eighty] twenty days from the date on which the last
28 such reduced price becomes effective, except [for the meeting of
29 competition as set forth in subsection (b)]. However, such
30 reduced price may be increased during such one hundred eighty-

1 day period to reflect any tax increase on malt or brewed
2 beverages.] that price may be increased earlier:
3 (i) to reflect any tax increase on malt or brewed beverages;
4 (ii) in the manner described in subsection (b), if the
5 increase was effected to meet competition; or
6 (iii) with permission of the board granted in the manner
7 described in subsection (c).

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

price on such package of such brand offered or sold to all other
importing distributors or distributors or retail licensees
within [this Commonwealth] the geographic area by a like amount.

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

(5) Every importing distributor and distributor receiving a
price reduction on any package of any brand of malt or brewed
beverages pursuant to this section shall reduce his price by a
like amount to all classes of customers, ~~including the general~~
~~public.~~

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

(i) price reduction with respect to any malt of brewed
beverage;

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

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

(b) If [a] any manufacturer, importing distributor or
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 competing brand to meet
10 competition, which 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 twentieth 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] twenty days from when the price went into
23 effect [upon an appropriate showing that market conditions
24 warrant a change in price.] if market conditions, or any other
25 good cause, support the change. The manufacturer, importing
26 distributor or distributor shall notify the board within forty-
27 eight hours of the change of such price. The board shall set a
28 hearing date as soon as practicable and shall rule on whether
29 the manufacturer, importing distributor or distributor has made
30 an appropriate showing which supports the price change. If the

1 manufacturer, importing distributor or distributor fails to show
2 good cause, it shall reimburse the difference between the
3 original and increased price to those who purchased the malt or
4 brewed 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 a summary of the filing and applications
19 deriving from this section.

20 Section ~~6~~ 7. Section 492(4) of the act is amended to read: <—

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

23 It shall be unlawful--

24 * * *

25 (4) [Sunday Sales of Malt or Brewed Beverages by] Activities
26 of Manufacturers, Importing Distributors or Distributors on
27 Sunday. For any manufacturer of malt or brewed beverages,
28 importing distributor or distributor, or the servants, agents or
29 employees of the same, to sell[, trade or barter in] malt or
30 brewed beverages between the hours of twelve o'clock midnight of

1 any Saturday and two o'clock in the forenoon of the following
2 Monday. Notwithstanding any other provision of this section,
3 delivery or receiving of malt or brewed beverages shall be
4 permissible on Sunday after prior arrangement as follows:

5 (1) A manufacturer may deliver to any importing distributor
6 or distributor to which the manufacturer has granted wholesale
7 distribution rights for the manufacturer's product.

8 (2) An importing distributor or distributor may deliver to
9 any organization to which a special occasion permit has been
10 issued BETWEEN THE HOURS OF NINE O'CLOCK ANTEMERIDIAN AND FIVE <—
11 O'CLOCK POSTMERIDIAN.

12 (3) An importing distributor or distributor may deliver to
13 anyone not licensed under this act. The term "prior arrangement" <—
14 ANYONE NOT LICENSED UNDER THIS ACT BETWEEN THE HOURS OF NINE <—
15 O'CLOCK ANTEMERIDIAN AND FIVE O'CLOCK POSTMERIDIAN. THE TERM
16 "PRIOR ARRANGEMENT" shall mean that malt or brewed beverages
17 having a total sale price, excluding any deposits or credits,
18 exceeding two hundred fifty dollars (\$250) have been ordered,
19 invoiced and paid for in full at the seller's licensed premises
20 before the Sunday of delivery.

21 * * *

22 Section 7 8. This act shall take effect in 60 days. <—