

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 291 Session of
2009

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DENLINGER, FABRIZIO AND GOODMAN, FEBRUARY 6, 2009

AS REPORTED FROM COMMITTEE ON LIQUOR CONTROL, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 9, 2009

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 definitions, for malt and brewed
18 beverages manufacturers', distributors' and importing
19 distributors' licenses, for malt and brewed beverages
20 alternating brewers' licenses, for distributors' and
21 importing distributors' restrictions on sales, storage, etc.,
22 and for breweries.

23 This act shall be construed as an enactment of the General
24 Assembly's support for the 3-tier system for alcoholic beverages
25 production, distribution and sale that, through uniform
26 Statewide regulation, provides this Commonwealth regulatory

1 authority over the production, storage, distribution,
2 transportation, sale and consumption of alcoholic beverages by
3 and to its citizens, for the benefit of the public health and
4 welfare and this Commonwealth's economic stability. The General
5 Assembly intends that the liquor laws shall be enforced in order
6 to restrict sales to minors, collect all State and local taxes
7 due on the commerce in alcoholic beverages, establish open,
8 transparent and accountable distribution systems for alcoholic
9 beverages and the intent to exercise, to the fullest extent
10 allowed, all the authority granted a state under the Twenty-
11 first Amendment.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The definition of "distributor" in section 102 of
15 the act of April 12, 1951 (P.L.90, No.21), known as the Liquor
16 Code, reenacted and amended June 29, 1987 (P.L.32, No.14) and
17 amended May 31, 1996 (P.L.312, No.49), is amended and the
18 section is amended by adding definitions to read:

19 Section 102. Definitions.--The following words or phrases,
20 unless the context clearly indicates otherwise, shall have the
21 meanings ascribed to them in this section:

22 * * *

23 "Distributor" shall mean any person licensed by the board to
24 engage in the purchase only from [Pennsylvania] small
25 manufacturers and from importing distributors and the resale of
26 malt or brewed beverages, except to importing distributors and
27 distributors, in the original sealed containers as prepared for
28 the market by the manufacturer at the place of manufacture, but
29 not for consumption on the premises where sold, and in
30 quantities of not less than a case or original containers

1 containing one hundred twenty-eight ounces or more which may be
2 sold separately.

3 * * *

4 "Out-of-State small manufacturer" shall mean a small
5 manufacturer located outside this Commonwealth with a maximum
6 production of ~~three hundred~~ SEVENTY-FIVE thousand barrels of ←
7 malt or brewed beverages per year. In determining the annual
8 production, the out-of-State small manufacturer shall include a
9 portion of the production of any other manufacturer who holds,
10 directly or indirectly, an ownership interest in it or with whom
11 it has a distribution agreement in this Commonwealth. If another
12 manufacturer holds, directly or indirectly, an ownership
13 interest in the out-of-State small manufacturer, the percentage
14 of that interest shall be applied to the manufacturer's total
15 production of malt or brewed beverage products to determine the
16 amount that shall be included in determining the maximum
17 production for the out-of-State small manufacturer. If the out-
18 of-State small manufacturer has a distribution agreement with a
19 larger manufacturer for distribution in this Commonwealth, the
20 distributing manufacturer's total distribution in this
21 Commonwealth shall be added to the out-of-State small
22 manufacturer's production to determine whether the ~~three hundred~~ ←
23 SEVENTY-FIVE thousand barrel mark has been reached. ←

24 * * *

25 "Small manufacturer" shall mean a manufacturer of malt or
26 brewed beverages that produces no more than ~~three hundred~~ ←
27 SEVENTY-FIVE thousand barrels of malt or brewed beverages per ←
28 year. Only malt or brewed beverages for which the manufacturer
29 is responsible for paying the malt beverage tax shall be
30 considered in calculating the total number of barrels produced

1 per year for a manufacturer.

2 * * *

3 Section 2. Section 431 of the act, amended December 20, 1996
4 (P.L.1513, No.196), December 21, 1998 (P.L.1202, No.155) and
5 December 8, 2004 (P.L.1810, No.239), is amended to read:

6 Section 431. Malt and Brewed Beverages Manufacturers',
7 Distributors' and Importing Distributors' Licenses.--(a) The
8 board shall issue to any person a resident of this Commonwealth
9 of good repute who applies therefor, and pays the license fee
10 hereinafter prescribed, a manufacturer's license to produce and
11 manufacture malt or brewed beverages, and to transport, sell and
12 deliver malt or brewed beverages from the place of manufacture
13 only in original containers, in quantities of not less than a
14 case or original containers containing one hundred twenty-eight
15 ounces or more which may be sold separately anywhere within the
16 Commonwealth. The application for such license shall be in such
17 form and contain such information as the board shall require.
18 All such licenses shall be granted for a license period to be
19 determined by the board. Every manufacturer shall keep at his or
20 its principal place of business, within the Commonwealth daily
21 permanent records which shall show, (1) the quantities of raw
22 materials received and used in the manufacture of malt or brewed
23 beverages and the quantities of malt or brewed beverages
24 manufactured and stored, (2) the sales of malt or brewed
25 beverages, (3) the quantities of malt or brewed beverages stored
26 for hire or transported for hire by or for the licensee, and (4)
27 the names and addresses of the purchasers or other recipients
28 thereof. Every place licensed as a manufacturer shall be subject
29 to inspection by members of the board or by persons duly
30 authorized and designated by the board, at any and all times of

1 the day or night, as they may deem necessary, for the detection
2 of violations of this act or of the rules and regulations of the
3 board, or for the purpose of ascertaining the correctness of the
4 records required to be kept by licensees. The books and records
5 of such licensees shall at all times be open to inspection by
6 members of the board or by persons duly authorized and
7 designated by the board. Members of the board and its duly
8 authorized agents shall have the right, without hindrance, to
9 enter any place which is subject to inspection hereunder or any
10 place where such records are kept for the purpose of making such
11 inspections and making transcripts thereof. Whenever any checks
12 issued in payment of filing and/or license fees shall be
13 returned to the board as dishonored, the board shall charge a
14 fee of five dollars (\$5.00) per hundred dollars or fractional
15 part thereof, plus all protest fees, to the maker of such check
16 submitted to the board. Failure to make full payment or pay the
17 face amount of the check in full and all charges thereon as
18 herein required within ten days after demand has been made by
19 the board upon the maker of the check or upon notification to
20 the board by the Department of Revenue or the Department of
21 Labor and Industry of its objection, the license of such person
22 shall immediately become invalid and shall remain invalid until
23 payment and all charges are received by the board.

24 (a.1) Any [out of State] manufacturer whose products are
25 sold and delivered within this Commonwealth shall be authorized:
26 to rent, lease or otherwise acquire space from an importing
27 distributor or bailee for hire authorized by this act at no more
28 than two locations per manufacturer for use of a segregated
29 portion of a warehouse or other storage facility owned or
30 operated by the importing distributor or bailee for hire at

1 which the [out of State] manufacturer may store, repackage and
2 sell malt or brewed beverages to any importing distributor to
3 whom the [out of State] manufacturer has granted distribution
4 rights pursuant to subsection (b) or to any purchaser outside
5 this Commonwealth for delivery outside this Commonwealth; or to
6 ship to its storage facility outside this Commonwealth. Such
7 manufacturer may compensate the importing distributor or bailee
8 for hire for any related storage, repackaging or delivery
9 services. The [out of State] manufacturer must file with the
10 Liquor Control Board the rate of compensation to be paid. A
11 separate written application must be filed to acquire storage
12 licenses, and the board may establish the information that must
13 be provided on the application. The initial filing must be made
14 prior to any payments being made, and any subsequent changes in
15 the rate of compensation must be filed within thirty days of any
16 such change. Nothing in this act authorizing storage facilities
17 for [out of State] manufacturers is intended to make any change
18 in the manner malt or brewed beverages are distributed through
19 the three-tier system.

20 (a.2) The board shall issue to [a holder of a manufacturer's
21 license] a ~~small~~ manufacturer no more than two storage licenses ←
22 per ~~small~~ manufacturer to cover storage facilities separate from ←
23 the location of the manufacturing facility. A ~~small~~ manufacturer ←
24 may use its storage facilities to receive, store, repackage,
25 sell and distribute malt or brewed beverages in the same manner
26 as it can at its place of manufacture or it may rent, lease or
27 otherwise acquire space from an importing distributor or bailee
28 for hire authorized by this act in the same manner as [an out of
29 State] a manufacturer as set forth in subsection (a.1). NO ←
30 MANUFACTURER MAY RENT, LEASE OR OTHERWISE ACQUIRE SPACE FOR MORE

1 THAN TWO STORAGE FACILITIES UNDER SUBSECTION (A.1) OR THIS
2 SUBSECTION. A separate written application must be filed to
3 acquire storage licenses, and the board is empowered to
4 establish what information must be provided on that application.
5 Nothing in this act authorizing off-site storage facilities for
6 manufacturers is intended to make any change in the manner malt
7 or brewed beverages are distributed through the three-tier
8 system.

9 (a.3) An applicant for an out-of-State small manufacturer
10 license shall file a written application with the board in such
11 form and containing such information as the board shall from
12 time to time prescribe. The application and license fees and the
13 restrictions on who may apply for the license shall be the same
14 as the fees and restrictions imposed on in-State small
15 manufacturer applicants. In addition, the out-of-State small
16 manufacturer must obtain a sales tax license from the department
17 prior to submitting the application to the board. The
18 information contained in the application shall be provided by
19 the board to the department upon request. In order to continue
20 to be eligible to hold an out-of-State small manufacturer
21 license, the out-of-State small manufacturer may not produce in
22 excess of ~~three hundred~~ SEVENTY-FIVE thousand barrels of malt or ←
23 brewed beverages per year, as that calculation is defined in
24 section 102. No out-of-State small manufacturer licensee or its
25 officers, directors, shareholders or members shall hold any
26 interest in any other license issued by the board; nor shall any
27 out-of-State manufacturer licensee or its officers, directors,
28 shareholders or members, either directly or indirectly, lend
29 moneys, credit or equivalent thereof, to any other licensee; nor
30 shall any out-of-State manufacturer licensee or its officers,

1 directors, shareholders or members guarantee the payment of any
2 bond, mortgage, note or other obligations of any other licensee;
3 nor shall any out-of-State manufacturer licensee or its
4 officers, directors, shareholders or members be the owner,
5 proprietor or lessor of any place for which any other license
6 has been issued by the board. Out-of-State small manufacturer
7 licensees are deemed to have submitted to the jurisdiction of
8 the board, any other Commonwealth agency and the courts of this
9 Commonwealth for purposes of enforcement of this section and any
10 related laws, rules or regulations. Out-of-State small
11 manufacturer licensees are subject to citation by the
12 enforcement bureau under section 471 and nonrenewal by the board
13 under section 470. The department may promulgate regulations
14 requiring the filing of periodic reports by out-of-State small
15 manufacturers to ensure compliance with the provisions of this
16 section. A holder of an out-of-State small manufacturer license
17 may deliver malt or brewed beverages it has manufactured to any
18 holder of any retail license issued by the board. In doing so,
19 the out-of-State small manufacturer must use its own vehicles
20 and may not, in the Commonwealth, use the services of a
21 transporter-for-hire or other commercial carrier. If the out-of-
22 State small manufacturer chooses to self-distribute in this
23 Commonwealth, it is not permitted to utilize storage services or
24 facilities otherwise available under section 431(a.1).

25 (b) The board shall issue to any reputable person who
26 applies therefor, and pays the license fee hereinafter
27 prescribed, a distributor's or importing distributor's license
28 for the place which such person desires to maintain for the sale
29 of malt or brewed beverages, not for consumption on the premises
30 where sold, and in quantities of not less than a case or

1 original containers containing one hundred twenty-eight ounces
2 or more which may be sold separately as prepared for the market
3 by the manufacturer at the place of manufacture. The board shall
4 have the discretion to refuse a license to any person or to any
5 corporation, partnership or association if such person, or any
6 officer or director of such corporation, or any member or
7 partner of such partnership or association shall have been
8 convicted or found guilty of a felony within a period of five
9 years immediately preceding the date of application for the said
10 license: And provided further, That, in the case of any new
11 license or the transfer of any license to a new location, the
12 board may, in its discretion, grant or refuse such new license
13 or transfer if such place proposed to be licensed is within
14 three hundred feet of any church, hospital, charitable
15 institution, school or public playground, or if such new license
16 or transfer is applied for a place which is within two hundred
17 feet of any other premises which is licensed by the board: And
18 provided further, That the board shall refuse any application
19 for a new license or the transfer of any license to a new
20 location if, in the board's opinion, such new license or
21 transfer would be detrimental to the welfare, health, peace and
22 morals of the inhabitants of the neighborhood within a radius of
23 five hundred feet of the place proposed to be licensed. The
24 board shall refuse any application for a new license or the
25 transfer of any license to a location where the sale of liquid
26 fuels or oil is conducted. The board may enter into an agreement
27 with the applicant concerning additional restrictions on the
28 license in question. If the board and the applicant enter into
29 such an agreement, such agreement shall be binding on the
30 applicant. Failure by the applicant to adhere to the agreement

1 will be sufficient cause to form the basis for a citation under
2 section 471 and for the nonrenewal of the license under section
3 470. If the board enters into an agreement with an applicant
4 concerning additional restrictions, those restrictions shall be
5 binding on subsequent holders of the license until the license
6 is transferred to a new location or until the board enters into
7 a subsequent agreement removing those restrictions. If the
8 application in question involves a location previously licensed
9 by the board, then any restrictions imposed by the board on the
10 previous license at that location shall be binding on the
11 applicant unless the board enters into a new agreement
12 rescinding those restrictions. The board shall require notice to
13 be posted on the property or premises upon which the licensee or
14 proposed licensee will engage in sales of malt or brewed
15 beverages. This notice shall be similar to the notice required
16 of hotel, restaurant and club liquor licensees.

17 Except as hereinafter provided, such license shall authorize
18 the holder thereof to sell or deliver malt or brewed beverages
19 in quantities above specified anywhere within the Commonwealth
20 of Pennsylvania, which, in the case of distributors, have been
21 purchased only from persons licensed under this act as small
22 manufacturers or importing distributors, and in the case of
23 importing distributors, have been purchased from manufacturers
24 or persons outside this Commonwealth engaged in the legal sale
25 of malt or brewed beverages or from manufacturers or importing
26 distributors licensed under this article. In the case of an
27 importing distributor, the holder of such a license shall be
28 authorized to store and repackage malt or brewed beverages owned
29 by a manufacturer at a segregated portion of a warehouse or
30 other storage facility authorized by section 441(d) and operated

1 by the importing distributor within its appointed territory and
2 deliver such beverages to another importing distributor who has
3 been granted distribution rights by the manufacturer as provided
4 herein. The importing distributor shall be permitted to receive
5 a fee from the manufacturer for any related storage, repackaging
6 or delivery services. In the case of a bailee for hire hired by
7 a manufacturer, the holder of such a permit shall be authorized:
8 to receive, store and repackage malt or brewed beverages
9 produced by that manufacturer for sale by that manufacturer to
10 importing distributors to whom that manufacturer has given
11 distribution rights pursuant to this subsection or to purchasers
12 outside this Commonwealth for delivery outside this
13 Commonwealth; or to ship to that manufacturer's storage
14 facilities outside this Commonwealth. The bailee for hire shall
15 be permitted to receive a fee from the manufacturer for any
16 related storage, repackaging or delivery services. The bailee
17 for hire shall, as required in Article V of this act, keep
18 complete and accurate records of all transactions, inventory,
19 receipts and shipments and make all records and the licensed
20 areas available for inspection by the board and for the
21 Pennsylvania State Police, Bureau of Liquor Control Enforcement,
22 during normal business hours.

23 Each [out of State] manufacturer of malt or brewed beverages, _____
24 excluding small manufacturers, whose products are sold and
25 delivered in this Commonwealth shall give distributing rights
26 for such products in designated geographical areas to specific
27 importing distributors, and such importing distributor shall not
28 sell or deliver malt or brewed beverages manufactured by the
29 [out of State] manufacturer to any person issued a license under
30 the provisions of this act whose licensed premises are not

1 located within the geographical area for which he has been given
2 distributing rights by such manufacturer. Should a licensee
3 accept the delivery of such malt or brewed beverages in
4 violation of this section, said licensee shall be subject to a
5 suspension of his license for at least thirty days: Provided,
6 That the importing distributor holding such distributing rights
7 for such product shall not sell or deliver the same to another
8 importing distributor without first having entered into a
9 written agreement with the said secondary importing distributor
10 setting forth the terms and conditions under which such products
11 are to be resold within the territory granted to the primary
12 importing distributor by the manufacturer.

13 When a [Pennsylvania] small manufacturer of malt or brewed
14 beverages licensed under this article names or constitutes a
15 distributor or importing distributor as the primary or original
16 supplier of his product, he shall also designate the specific
17 geographical area for which the said distributor or importing
18 distributor is given distributing rights, and such distributor
19 or importing distributor shall not sell or deliver the products
20 of such manufacturer to any person issued a license under the
21 provisions of this act whose licensed premises are not located
22 within the geographical area for which distributing rights have
23 been given to the distributor and importing distributor by the
24 said manufacturer: Provided, That the importing distributor
25 holding such distributing rights for such product shall not sell
26 or deliver the same to another importing distributor without
27 first having entered into a written agreement with the said
28 secondary importing distributor setting forth the terms and
29 conditions under which such products are to be resold within the
30 territory granted to the primary importing distributor by the

1 manufacturer. Nothing herein contained shall be construed to
2 prevent any manufacturer from authorizing the importing
3 distributor holding the distributing rights for a designated
4 geographical area from selling the products of such manufacturer
5 to another importing distributor also holding distributing
6 rights from the same manufacturer for another geographical area,
7 providing such authority be contained in writing and a copy
8 thereof be given to each of the importing distributors so
9 affected.

10 (b.1) (1) Any person in this Commonwealth or elsewhere who
11 shall purchase or in any manner whatsoever acquire or otherwise
12 succeed to the business of a manufacturer, assets or rights to
13 import, market, ship into this Commonwealth or distribute a
14 brand of beer, or to use and exploit any trademark incorporated
15 as part of a brand of beer produced by such a manufacturer shall
16 be obligated to all terms of the manufacturer's franchise
17 agreements in effect on the effective date of the purchase,
18 acquisition or succession, or, if earlier, at the time the
19 agreement contemplating the purchase, acquisition or succession
20 is actually made.

21 (2) "Purchase" or "acquisition," for purposes of this
22 section, includes, but is not limited to, a purchase,
23 acquisition, lease, license or assignment of all or a
24 controlling interest in the capital stock or operating assets,
25 including brand trademarks rights; merger; any corporate
26 reorganization or consolidation; and also, without limitation,
27 any license, cross-license, joint venture or other agreement or
28 arrangement, directly or indirectly, transferring, substituting
29 or materially changing the person or persons authorized by the
30 one owning or controlling a brand or any trademark as part of a

1 brand, to produce, import, ship, market or distribute the brand
2 of beer into or within this Commonwealth.

3 (3) "Manufacturer," as used in this subsection, shall mean
4 any person, including any agent of such person, who (i) is
5 licensed as a manufacturer of malt or brewed beverages located
6 within the Commonwealth of Pennsylvania, (ii) holds a
7 distributor or importing distributor license, or (iii)
8 manufactures any malt beverage, has title to any malt beverage
9 products or has the contractual right to distribute any malt
10 beverage product, whether licensed in this Commonwealth or not,
11 who enters into an "agreement" with any importing distributor
12 licensed to do business in this Commonwealth.

13 (c) The aforesaid licenses shall be issued only to reputable
14 individuals, partnerships and associations who are, or whose
15 members are, citizens of the United States and have for two
16 years prior to the date of their applications been residents of
17 the Commonwealth of Pennsylvania or to reputable corporations
18 organized or duly registered under the laws of the Commonwealth
19 of Pennsylvania. Such licenses shall be issued to corporations
20 duly organized or registered under the laws of the Commonwealth
21 of Pennsylvania only when it appears that all of the officers
22 and directors of the corporation are citizens of the United
23 States and [have been] are residents of the Commonwealth of
24 Pennsylvania [for a period of at least two years prior to the
25 date of application], and that at least fifty-one per centum of
26 the capital stock of such corporation is actually owned by
27 individuals who are citizens of the United States and [have
28 been] are residents of the Commonwealth of Pennsylvania [for a
29 period of at least two years prior to the date of application]:
30 Provided, That the provisions of this subsection with respect to

1 residence requirements shall not apply to individuals, partners,
2 officers, directors and owners of capital stock, of corporations
3 licensed or applying for licenses as manufacturers of malt or
4 brewed beverages, nor shall the provisions of this subsection
5 with respect to stockholder requirements apply to corporations
6 licensed or applying for licenses as manufacturers of malt or
7 brewed beverages.

8 (d) (1) All distributing rights as hereinabove required
9 shall be in writing, shall be equitable in their provisions and
10 shall be substantially similar as to terms and conditions with
11 all other distributing rights agreements between the
12 manufacturer giving such agreement and its other importing
13 distributors and distributors shall not be modified, cancelled,
14 terminated or rescinded by the manufacturer without good cause,
15 and shall contain a provision in substance or effect as follows:
16 "The manufacturer recognizes that the importing distributor and
17 distributor are free to manage their business in the manner the
18 importing distributor and distributor deem best and that this
19 prerogative vests in the importing distributor and distributor
20 the exclusive right to establish a selling price, to select the
21 brands of malt or brewed beverages they wish to handle and to
22 determine the efforts and resources which the importing
23 distributor and distributor will exert to develop and promote
24 the same of the manufacturer's products handled by the importing
25 distributor and distributor. However, the manufacturer expects
26 that the importing distributor and distributor will price
27 competitively the products handled by them, devote reasonable
28 effort and resources to the sale of such products and maintain a
29 reasonable sales level." "Good cause" shall mean the failure by
30 any party to an agreement, without reasonable excuse or

1 justification, to comply substantially with an essential,
2 reasonable and commercially acceptable requirement imposed by
3 the other party under the terms of an agreement.

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

22 (3) Except for discontinuance of a brand or a valid
23 termination for good cause, the purchaser of the assets of the
24 manufacturer as defined in this act shall become obligated to
25 all the territorial and brand designations of the agreement in
26 effect on the date of purchase. Purchase of assets as defined
27 for the purposes of this act shall include, but not be limited
28 to, the sale of stock, sale of assets, merger, lease, transfer
29 or consolidation.

30 (4) The court of common pleas of the county wherein the

1 licensed premises of the importing distributor or distributor
2 are located is hereby vested with jurisdiction and power to
3 enjoin the modification, rescission, cancellation or termination
4 of a franchise or agreement between a manufacturer and an
5 importing distributor or distributor at the instance of such
6 importing distributor or distributor who is or might be
7 adversely affected by such modification, rescission,
8 cancellation or termination, and in granting an injunction the
9 court shall provide that no manufacturer shall supply the
10 customers or territory of the importing distributor or
11 distributor by servicing the territory or customers through
12 other importing distributors or distributors or any other means
13 while the injunction is in effect: Provided, however, That any
14 injunction issued under this subsection shall require the
15 posting of sufficient bond against damages arising from an
16 injunction improvidently granted and a showing that the danger
17 of irrevocable loss or damage is immediate and that during the
18 pendency of such injunction the importing distributor or
19 distributor shall continue to service the accounts of the
20 manufacturer in good faith.

21 (5) The provisions of this subsection shall not apply to
22 [Pennsylvania] small manufacturers [whose principal place of
23 business is located in Pennsylvania] unless they name or
24 constitute a distributor or importing distributor as a primary
25 or original supplier of their products subsequent to the
26 effective date of this act, or unless such [Pennsylvania] small
27 manufacturers have named or constituted a distributor or
28 importing distributor as a primary or original supplier of their
29 products prior to the effective date of this act, and which
30 status is continuing when this act becomes effective.

1 (e) In addition to the fees under section 614-A of the act
2 of April 9, 1929 (P.L.177, No.175), known as "The Administrative
3 Code of 1929," the board shall assess a fee surcharge of ninety-
4 five dollars (\$95.00) for a distributor's license and a fee
5 surcharge of four hundred seventy dollars (\$470.00) for an
6 importing distributor's license and a fee surcharge of seventy-
7 five dollars (\$75.00) for brand registration. Money collected
8 under this subsection shall be placed in a restricted account in
9 The State Stores Fund. The board may use the money in this
10 account to implement section 216. In the event the provisions of
11 section 447(a)(2) and/or (c) are held invalid, then this
12 subsection shall be void and shall not apply.

13 (f) (1) Any malt or brewed beverage produced outside this
14 Commonwealth that is repackaged by a bailee for hire or
15 importing distributor on behalf of an out of State manufacturer
16 must be returned to the out of State manufacturer and come to
17 rest out of State before it may reenter this Commonwealth. Such
18 repackaged malt or brewed beverages must be distributed through
19 the three-tier system. Any malt or brewed beverage that is
20 repackaged by a bailee for hire or importing distributor on
21 behalf of an in State manufacturer must be returned to the in
22 State manufacturer and come to rest at the in State
23 manufacturer's licensed facility.

24 (2) For purposes of this section, "repackage" shall mean any
25 change or alteration to the containers or container
26 configuration of a case.

27 Section 3. Section 431.1(d) of the act, added February 21,
28 2002 (P.L.103, No.10), is amended to read:

29 Section 431.1. Malt and Brewed Beverages Alternating
30 Brewers' Licenses.--* * *

(d) Malt and brewed beverages manufactured under the authority of an alternating brewer's license must be distributed in this Commonwealth only through specific importing distributors who shall first have been given distributor rights for such products in designated geographical areas through the distribution system required for [out-of-State] manufacturers under section 431(b) as well as all other pertinent sections of this act. The alternating brewer must comply with section 444.

* * *

Section 4. Section 441(g) of the act, added December 20, 1996 (P.L.1513, No.196), is amended to read:

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

(g) All malt or brewed beverages purchased by an importing distributor from a [Pennsylvania] manufacturer of malt or brewed beverages [or from any person located outside this Commonwealth] for resale shall be invoiced to the importing distributor, shall come physically into the possession of such importing distributor and shall be unloaded into and distributed from the licensed premises of such importing distributor. The board may act to further define and control the storage and distribution of malt or brewed beverages in conformity with this section and this act.

Section 5. Section 446 of the act, amended June 30, 1992 (P.L.327, No.66), May 31, 1996 (P.L.312, No.49) and January 6, 2006 (P.L.1, No.1), is amended to read:

Section 446. Breweries.--Holders of a brewery license may:

(1) Sell malt or brewed beverages produced and owned by the brewery on the licensed premises under such conditions and regulations as the board may enforce, to individuals for

consumption on the premises [and]. Additionally, a small
manufacturer may sell malt or brewed beverages produced and
owned by the brewery on the licensed premises under such
conditions and regulations as the board may enforce to hotel,
restaurant, club and public service liquor licensees.

(2) Operate a restaurant or brewery pub on the licensed
premises under such conditions and regulations as the board may
enforce: Provided, however, That sales on Sunday may be made
irrespective of the volume of food sales if the licensed
premises are at a public venue location. The holder of a brewery
license may sell at its brewery pub premises Pennsylvania wines
it has purchased from either the holder of a Pennsylvania
limited winery license or from the board: Provided, however,
That said wines must be consumed at the licensed brewery pub
premises.

(3) Use brewery storage and distribution facilities for the
purpose of receiving, storing and distributing malt or brewed
beverages manufactured outside this Commonwealth if the
beverages are distributed in this Commonwealth only through
specific importing distributors who shall have first been given
distributing rights for such products in designated geographical
areas through the distribution system required for [out-of-
State] manufacturers under section 431(b) as well as all other
pertinent sections of this act. The manufacturer of the
beverages must comply with section 444.

(4) Apply for and hold a hotel liquor license, a restaurant
liquor license or a malt and brewed beverages retail license to
sell for consumption at the restaurant or brewery pub on the
licensed brewery premises, liquor, wine and malt or brewed
beverages regardless of the place of manufacture, under the same

1 conditions and regulations as any other hotel liquor license,
2 restaurant liquor license or malt and brewed beverages retail
3 license, but must brew at least two hundred fifty barrels per
4 year. Each holder of a brewery license who receives a hotel
5 liquor license, a restaurant liquor license or a malt or brewed
6 beverages retail license to operate a brew pub shall not sell
7 directly to any person licensed by this act, except if any malt
8 or brewed beverage is to be distributed in this Commonwealth it
9 shall be only through specific importing distributors who shall
10 have first been given distributing rights for such products in
11 designated geographical areas through the distribution system
12 required for [out-of-State] manufacturers under section 431(b)
13 as well as all other pertinent sections of this act.

14 Section 6. The provisions of this act are severable. If any
15 provision of this act or its application to any person or
16 circumstance is held invalid, the invalidity shall not affect
17 other provisions or applications of this act which can be given
18 effect without the invalid provision or application.

19 Section 7. This act shall take effect December 31, 2009.