

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 291 Session of
2009

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FEBRUARY 6, 2009

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 29, 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

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

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

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

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

23 * * *

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

quantities of not less than a case or original containers
containing one hundred twenty-eight ounces or more which may be
sold separately.

* * *

~~"Out of State small "SMALL manufacturer" shall mean a small
manufacturer located outside this Commonwealth with a maximum
production of seventy-five thousand barrels of malt or brewed
beverages per year. In determining the annual production, the
out of State small manufacturer shall include a portion of the
production of any other manufacturer who holds, directly or
indirectly, an ownership interest in it or with whom it has a
distribution agreement in this Commonwealth. If another
manufacturer holds, directly or indirectly, an ownership
interest in the out of State small manufacturer, the percentage
of that interest shall be applied to the manufacturer's total
production of malt or brewed beverage products to determine the
amount that shall be included in determining the maximum
production for the out of State small manufacturer. If the out
of State small manufacturer has a distribution agreement with a
larger manufacturer for distribution in this Commonwealth, the
distributing manufacturer's total distribution in this
Commonwealth shall be added to the out of State small
manufacturer's production to determine whether the seventy-five
thousand barrel mark has been reached. ONLY MALT OR BREWED
BEVERAGES FOR WHICH THE SMALL MANUFACTURER IS RESPONSIBLE FOR
PAYING THE MALT BEVERAGE TAX SHALL BE CONSIDERED IN CALCULATING
THE TOTAL NUMBER OF BARRELS PRODUCED PER YEAR BY THE SMALL
MANUFACTURER.~~

* * *

~~"Small manufacturer" shall mean a manufacturer of malt or~~

~~brewed beverages that produces no more than seventy five
thousand barrels of malt or brewed beverages per year. Only malt
or brewed beverages for which the manufacturer is responsible
for paying the malt beverage tax shall be considered in
calculating the total number of barrels produced per year for a
manufacturer.~~

~~* * *~~

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

Section 431. Malt and Brewed Beverages Manufacturers',
Distributors' and Importing Distributors' Licenses.--(a) The
board shall issue to any person a resident of this Commonwealth
of good repute who applies therefor, and pays the license fee
hereinafter prescribed, a manufacturer's license to produce and
manufacture malt or brewed beverages, and to transport, sell and
deliver malt or brewed beverages from the place of manufacture
only in original containers, in quantities of not less than a
case or original containers containing one hundred twenty-eight
ounces or more which may be sold separately anywhere within the
Commonwealth. The application for such license shall be in such
form and contain such information as the board shall require.
All such licenses shall be granted for a license period to be
determined by the board. Every manufacturer shall keep at his or
its principal place of business, within the Commonwealth daily
permanent records which shall show, (1) the quantities of raw
materials received and used in the manufacture of malt or brewed
beverages and the quantities of malt or brewed beverages
manufactured and stored, (2) the sales of malt or brewed
beverages, (3) the quantities of malt or brewed beverages stored

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

29 (a.1) Any [out of State] manufacturer whose products are
30 sold and delivered within this Commonwealth shall be authorized:

1 to rent, lease or otherwise acquire space from an importing
2 distributor or bailee for hire authorized by this act at no more
3 than two locations per manufacturer for use of a segregated
4 portion of a warehouse or other storage facility owned or
5 operated by the importing distributor or bailee for hire at
6 which the [out of State] manufacturer may store, repackage and
7 sell malt or brewed beverages to any importing distributor to
8 whom the [out of State] manufacturer has granted distribution
9 rights pursuant to subsection (b) or to any purchaser outside
10 this Commonwealth for delivery outside this Commonwealth; or to
11 ship to its storage facility outside this Commonwealth. Such
12 manufacturer may compensate the importing distributor or bailee
13 for hire for any related storage, repackaging or delivery
14 services. The [out of State] manufacturer must file with the
15 Liquor Control Board the rate of compensation to be paid. A
16 separate written application must be filed to acquire storage
17 licenses, and the board may establish the information that must
18 be provided on the application. The initial filing must be made
19 prior to any payments being made, and any subsequent changes in
20 the rate of compensation must be filed within thirty days of any
21 such change. Nothing in this act authorizing storage facilities
22 for [out of State] manufacturers is intended to make any change
23 in the manner malt or brewed beverages are distributed through
24 the three-tier system.

25 (a.2) The board shall issue to [a holder of a manufacturer's
26 license] a manufacturer no more than two storage licenses per
27 manufacturer to cover storage facilities separate from the
28 location of the manufacturing facility. A manufacturer may use
29 its storage facilities to receive, store, repackage, sell TO AN
30 IMPORTING DISTRIBUTOR OR DISTRIBUTOR and distribute malt or



1 brewed beverages in the same manner as it can at its place of
2 manufacture or it may rent, lease or otherwise acquire space
3 from an importing distributor or bailee for hire authorized by
4 this act in the same manner as [an out of State] a manufacturer
5 as set forth in subsection (a.1). No manufacturer may rent,
6 lease or otherwise acquire space for more than two storage
7 facilities under subsection (a.1) or this subsection. A separate
8 written application must be filed to acquire storage licenses,
9 and the board is empowered to establish what information must be
10 provided on that application. Nothing in this act authorizing
11 off-site storage facilities for manufacturers is intended to
12 make any change in the manner malt or brewed beverages are
13 distributed through the three-tier system.

14 ~~(a.3) An applicant for an out of State small manufacturer~~ ←
15 ~~license shall file a written application with the board in such~~
16 ~~form and containing such information as the board shall from~~
17 ~~time to time prescribe. The application and license fees and the~~
18 ~~restrictions on who may apply for the license shall be the same~~
19 ~~as the fees and restrictions imposed on in State small~~
20 ~~manufacturer applicants. In addition, the out of State small~~
21 ~~manufacturer must obtain a sales tax license from the department~~
22 ~~prior to submitting the application to the board. The~~
23 ~~information contained in the application shall be provided by~~
24 ~~the board to the department upon request. In order to continue~~
25 ~~to be eligible to hold an out of State small manufacturer~~
26 ~~license, the out of State small manufacturer may not produce in~~
27 ~~excess of seventy five thousand barrels of malt or brewed~~
28 ~~beverages per year, as that calculation is defined in section~~
29 ~~102. No out of State small manufacturer licensee or its~~
30 ~~officers, directors, shareholders or members shall hold any~~

~~interest in any other license issued by the board; nor shall any
out of State manufacturer licensee or its officers, directors,
shareholders or members, either directly or indirectly, lend
moneys, credit or equivalent thereof, to any other licensee; nor
shall any out of State manufacturer licensee or its officers,
directors, shareholders or members guarantee the payment of any
bond, mortgage, note or other obligations of any other licensee;
nor shall any out of State manufacturer licensee or its
officers, directors, shareholders or members be the owner,
proprietor or lessor of any place for which any other license
has been issued by the board. Out of State small manufacturer
licensees are deemed to have submitted to the jurisdiction of
the board, any other Commonwealth agency and the courts of this
Commonwealth for purposes of enforcement of this section and any
related laws, rules or regulations. Out of State small
manufacturer licensees are subject to citation by the
enforcement bureau under section 471 and nonrenewal by the board
under section 470. The department may promulgate regulations
requiring the filing of periodic reports by out of State small
manufacturers to ensure compliance with the provisions of this
section. A holder of an out of State small manufacturer license
may deliver malt or brewed beverages it has manufactured to any
holder of any retail license issued by the board. In doing so,
the out of State small manufacturer must use its own vehicles
and may not, in the Commonwealth, use the services of a
transporter for hire or other commercial carrier. If the out of
State small manufacturer chooses to self-distribute in this
Commonwealth, it is not permitted to utilize storage services or
facilities otherwise available under section 431(a.1).~~

(A.3) IN ORDER TO CONTINUE TO BE ELIGIBLE AS A SMALL



1 MANUFACTURER, THE SMALL MANUFACTURER MAY NOT PRODUCE IN EXCESS
2 OF SEVENTY-FIVE THOUSAND BARRELS OF MALT OR BREWED BEVERAGES PER
3 YEAR, AS CALCULATED UNDER SECTION 102. THE BOARD SHALL CERTIFY
4 THAT A MANUFACTURER IS ELIGIBLE AS A SMALL MANUFACTURER UPON THE
5 WRITTEN REQUEST OF THE MANUFACTURER, ON A FORM PRESCRIBED BY THE
6 BOARD, FOR SUCH CERTIFICATION. A REQUEST FOR CERTIFICATION MAY
7 BE SUBMITTED BY A MANUFACTURER THAT HOLDS A MANUFACTURER'S
8 LICENSE AND BELIEVES IT IS ELIGIBLE AS A SMALL MANUFACTURER OR
9 IT MAY BE SUBMITTED BY A MANUFACTURER FOR A MANUFACTURER'S
10 LICENSE.

11 (A.4) A SMALL MANUFACTURER THAT IS LOCATED OUTSIDE OF THIS
12 COMMONWEALTH AND HOLDS A MANUFACTURER'S LICENSE IS DEEMED TO
13 HAVE SUBMITTED TO THE JURISDICTION OF THE BOARD, ANY OTHER
14 COMMONWEALTH AGENCY AND THE COURTS OF THIS COMMONWEALTH FOR
15 PURPOSES OF ENFORCEMENT OF THIS SECTION AND ANY RELATED LAWS,
16 RULES OR REGULATIONS. THE SMALL MANUFACTURER SHALL ALSO BE
17 SUBJECT TO CITATION BY THE ENFORCEMENT BUREAU UNDER SECTION 471
18 AND NONRENEWAL BY THE BOARD UNDER SECTION 470. THE DEPARTMENT OF
19 REVENUE MAY PROMULGATE REGULATIONS REQUIRING THE FILING OF
20 PERIODIC REPORTS BY A SMALL MANUFACTURER SUBJECT TO THE
21 PROVISIONS OF THIS SUBSECTION TO ENSURE COMPLIANCE WITH THE
22 PROVISIONS OF THIS SECTION.

23 (A.5) A SMALL MANUFACTURER THAT HOLDS A VALID MANUFACTURER'S
24 LICENSE MAY DELIVER MALT OR BREWED BEVERAGES IT HAS MANUFACTURED
25 TO ANY HOLDER OF ANY RETAIL LICENSE ISSUED BY THE BOARD IF IT
26 USES ITS OWN VEHICLES. A SMALL MANUFACTURER MAY NOT USE THE
27 SERVICES OF A TRANSPORTER-FOR-HIRE OR OTHER COMMERCIAL CARRIER
28 TO DELIVER MALT OR BREWED BEVERAGES IN THIS COMMONWEALTH. A
29 SMALL MANUFACTURER THAT DELIVERS MALT OR BREWED BEVERAGES UNDER
30 THIS SUBSECTION SHALL NOT BE ENTITLED TO UTILIZE STORAGE

1 SERVICES OR FACILITIES OTHERWISE AVAILABLE UNDER SUBSECTION
2 (A.1) OR (A.2).

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

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

25 Except as hereinafter provided, such license shall authorize
26 the holder thereof to sell or deliver malt or brewed beverages
27 in quantities above specified anywhere within the Commonwealth
28 of Pennsylvania, which, in the case of distributors, have been
29 purchased only from persons licensed under this act as small
30 manufacturers or importing distributors, and in the case of

1 importing distributors, have been purchased from manufacturers
2 or persons outside this Commonwealth engaged in the legal sale
3 of malt or brewed beverages or from manufacturers or importing
4 distributors licensed under this article. In the case of an
5 importing distributor, the holder of such a license shall be
6 authorized to store and repackage malt or brewed beverages owned
7 by a manufacturer at a segregated portion of a warehouse or
8 other storage facility authorized by section 441(d) and operated
9 by the importing distributor within its appointed territory and
10 deliver such beverages to another importing distributor who has
11 been granted distribution rights by the manufacturer as provided
12 herein. The importing distributor shall be permitted to receive
13 a fee from the manufacturer for any related storage, repackaging
14 or delivery services. In the case of a bailee for hire hired by
15 a manufacturer, the holder of such a permit shall be authorized:
16 to receive, store and repackage malt or brewed beverages
17 produced by that manufacturer for sale by that manufacturer to
18 importing distributors to whom that manufacturer has given
19 distribution rights pursuant to this subsection or to purchasers
20 outside this Commonwealth for delivery outside this
21 Commonwealth; or to ship to that manufacturer's storage
22 facilities outside this Commonwealth. The bailee for hire shall
23 be permitted to receive a fee from the manufacturer for any
24 related storage, repackaging or delivery services. The bailee
25 for hire shall, as required in Article V of this act, keep
26 complete and accurate records of all transactions, inventory,
27 receipts and shipments and make all records and the licensed
28 areas available for inspection by the board and for the
29 Pennsylvania State Police, Bureau of Liquor Control Enforcement,
30 during normal business hours.

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

21 When a [Pennsylvania] small manufacturer of malt or brewed
22 beverages licensed under this article names or constitutes a
23 distributor or importing distributor as the primary or original
24 supplier of his product, he shall also designate the specific
25 geographical area for which the said distributor or importing
26 distributor is given distributing rights, and such distributor
27 or importing distributor shall not sell or deliver the products
28 of such manufacturer to any person issued a license under the
29 provisions of this act whose licensed premises are not located
30 within the geographical area for which distributing rights have

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

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

29 (2) "Purchase" or "acquisition," for purposes of this
30 section, includes, but is not limited to, a purchase,

1 acquisition, lease, license or assignment of all or a
2 controlling interest in the capital stock or operating assets,
3 including brand trademarks rights; merger; any corporate
4 reorganization or consolidation; and also, without limitation,
5 any license, cross-license, joint venture or other agreement or
6 arrangement, directly or indirectly, transferring, substituting
7 or materially changing the person or persons authorized by the
8 one owning or controlling a brand or any trademark as part of a
9 brand, to produce, import, ship, market or distribute the brand
10 of beer into or within this Commonwealth.

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

21 (c) The aforesaid licenses shall be issued only to reputable
22 individuals, partnerships and associations who are, or whose
23 members are, citizens of the United States and [have for two
24 years prior to the date of their applications been] ARE
25 residents of the Commonwealth of Pennsylvania or to reputable
26 corporations organized or duly registered under the laws of the
27 Commonwealth of Pennsylvania. Such licenses shall be issued to
28 corporations duly organized or registered under the laws of the
29 Commonwealth of Pennsylvania only when it appears that all of
30 the officers and directors of the corporation are citizens of

1 the United States and [have been] are residents of the
2 Commonwealth of Pennsylvania [for a period of at least two years
3 prior to the date of application], and that at least fifty-one
4 per centum of the capital stock of such corporation is actually
5 owned by individuals who are citizens of the United States and
6 [have been] are residents of the Commonwealth of Pennsylvania
7 [for a period of at least two years prior to the date of
8 application]: Provided, That the provisions of this subsection
9 with respect to residence requirements shall not apply to
10 individuals, partners, officers, directors and owners of capital
11 stock, of corporations licensed or applying for licenses as
12 manufacturers of malt or brewed beverages, nor shall the
13 provisions of this subsection with respect to stockholder
14 requirements apply to corporations licensed or applying for
15 licenses as manufacturers of malt or brewed beverages.

16 (d) (1) All distributing rights as hereinabove required
17 shall be in writing, shall be equitable in their provisions and
18 shall be substantially similar as to terms and conditions with
19 all other distributing rights agreements between the
20 manufacturer giving such agreement and its other importing
21 distributors and distributors shall not be modified, cancelled,
22 terminated or rescinded by the manufacturer without good cause,
23 and shall contain a provision in substance or effect as follows:
24 "The manufacturer recognizes that the importing distributor and
25 distributor are free to manage their business in the manner the
26 importing distributor and distributor deem best and that this
27 prerogative vests in the importing distributor and distributor
28 the exclusive right to establish a selling price, to select the
29 brands of malt or brewed beverages they wish to handle and to
30 determine the efforts and resources which the importing

1 distributor and distributor will exert to develop and promote
2 the same of the manufacturer's products handled by the importing
3 distributor and distributor. However, the manufacturer expects
4 that the importing distributor and distributor will price
5 competitively the products handled by them, devote reasonable
6 effort and resources to the sale of such products and maintain a
7 reasonable sales level." "Good cause" shall mean the failure by
8 any party to an agreement, without reasonable excuse or
9 justification, to comply substantially with an essential,
10 reasonable and commercially acceptable requirement imposed by
11 the other party under the terms of an agreement.

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

30 (3) Except for discontinuance of a brand or a valid

1 termination for good cause, the purchaser of the assets of the
2 manufacturer as defined in this act shall become obligated to
3 all the territorial and brand designations of the agreement in
4 effect on the date of purchase. Purchase of assets as defined
5 for the purposes of this act shall include, but not be limited
6 to, the sale of stock, sale of assets, merger, lease, transfer
7 or consolidation.

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

29 (5) The provisions of this subsection shall not apply to
30 [Pennsylvania] small manufacturers [whose principal place of

1 business is located in Pennsylvania] unless they name or
2 constitute a distributor or importing distributor as a primary
3 or original supplier of their products subsequent to the
4 effective date of this act, or unless such [Pennsylvania] small
5 manufacturers have named or constituted a distributor or
6 importing distributor as a primary or original supplier of their
7 products prior to the effective date of this act, and which
8 status is continuing when this act becomes effective.

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

21 (f) (1) Any malt or brewed beverage produced outside this
22 Commonwealth that is repackaged by a bailee for hire or
23 importing distributor on behalf of an out of State manufacturer
24 must be returned to the out of State manufacturer and come to
25 rest out of State before it may reenter this Commonwealth. Such
26 repackaged malt or brewed beverages must be distributed through
27 the three-tier system. Any malt or brewed beverage that is
28 repackaged by a bailee for hire or importing distributor on
29 behalf of an in State manufacturer must be returned to the in
30 State manufacturer and come to rest at the in State

1 manufacturer's licensed facility.

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

5 Section 3. Section 431.1(d) of the act, added February 21,
6 2002 (P.L.103, No.10), is amended to read:

7 Section 431.1. Malt and Brewed Beverages Alternating
8 Brewers' Licenses.--* * *

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

17 * * *

18 Section 4. Section 441(g) of the act, added December 20,
19 1996 (P.L.1513, No.196), is amended to read:

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

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

1 this act.

2 Section 5. Section 446 of the act, amended June 30, 1992
3 (P.L.327, No.66), May 31, 1996 (P.L.312, No.49) and January 6,
4 2006 (P.L.1, No.1), is amended to read:

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

6 (1) Sell malt or brewed beverages produced and owned by the
7 brewery on the licensed premises under such conditions and
8 regulations as the board may enforce, to individuals for
9 consumption on the premises [and]. Additionally, a small
10 manufacturer may sell malt or brewed beverages produced and
11 owned by the brewery on the licensed premises under such
12 conditions and regulations as the board may enforce to hotel,
13 restaurant, club and public service liquor licensees.

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

24 (3) Use brewery storage and distribution facilities for the
25 purpose of receiving, storing and distributing malt or brewed
26 beverages manufactured outside this Commonwealth if the
27 beverages are distributed in this Commonwealth only through
28 specific importing distributors who shall have first been given
29 distributing rights for such products in designated geographical
30 areas through the distribution system required for [out-of-

1 State] manufacturers under section 431(b) as well as all other
2 pertinent sections of this act. The manufacturer of the
3 beverages must comply with section 444.

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

22 Section 6. The provisions of this act are severable. If any
23 provision of this act or its application to any person or
24 circumstance is held invalid, the invalidity shall not affect
25 other provisions or applications of this act which can be given
26 effect without the invalid provision or application.

27 Section 7. This act shall take effect ~~December 31, 2009~~. AS
28 FOLLOWS:

29 (1) THE REQUIREMENT IN SECTION 431(B) THAT CERTAIN
30 MANUFACTURERS ARE REQUIRED TO GIVE DISTRIBUTION RIGHTS FOR

1 THEIR PRODUCTS IN THIS COMMONWEALTH SHALL TAKE EFFECT IN 150
2 DAYS.

3 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

4 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
5 DAYS.