

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1933 Session of 2011

INTRODUCED BY MUSTIO, PAYNE, TAYLOR, EVERETT, F. KELLER,  
KILLION, KOTIK AND PICKETT, OCTOBER 6, 2011

REFERRED TO COMMITTEE ON LIQUOR CONTROL, OCTOBER 6, 2011

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 general powers of board, for sales by  
18 Pennsylvania liquor stores, for sales by liquor licensees and  
19 restrictions and for malt and brewed beverages  
20 manufacturers', distributors' and importing distributors'  
21 licenses; providing for wine and spirits sales permits for  
22 malt or brewed beverage distributors, for application for  
23 wine and spirits sales permits for malt and brewed beverage  
24 distributor licensees and for enhanced distributor's license,  
25 fees, privileges and restrictions; and further providing for  
26 distributors' and importing distributors' restrictions on  
27 sales and storage, for interlocking business prohibited and  
28 for unlawful acts relative to malt or brewed beverages and  
29 licensees.

30 The General Assembly of the Commonwealth of Pennsylvania  
31 hereby enacts as follows:

1 Section 1. Section 207 of the act of April 12, 1951 (P.L.90,  
2 No.21), known as the Liquor Code, reenacted and amended June 29,  
3 1987 (P.L.32, No.14), is amended by adding a subsection to read:

4 Section 207. General Powers of Board.--Under this act, the  
5 board shall have the power and its duty shall be:

6 \* \* \*

7 (1) To determine, in conjunction with the chairman and  
8 minority chairman of the Appropriations Committee of the Senate  
9 and the chairman and minority chairman of the Appropriations  
10 Committee of the House of Representatives, a five-year plan for  
11 returning profits from the sale of wine and spirits to the  
12 General Fund. The board shall meet with the chairman and  
13 minority chairman of the Appropriations Committee of the Senate  
14 and the chairman and minority chairman of the Appropriations  
15 Committee of the House of Representatives once each year to  
16 first determine a five-year plan for returning profits to the  
17 General Fund and each consecutive year to revisit this plan to  
18 ensure its viability.

19 Section 2. Section 305(b) of the act, amended July 6, 2005  
20 (P.L.135, No.39), is amended to read:

21 Section 305. Sales by Pennsylvania Liquor Stores.--\* \* \*

22 (b) Every Pennsylvania Liquor Store shall sell liquors at  
23 wholesale to hotels, restaurants, clubs, wine and spirits  
24 permittees, and railroad, pullman and steamship companies  
25 licensed under this act; and, under the regulations of the  
26 board, to pharmacists duly licensed and registered under the  
27 laws of the Commonwealth, and to manufacturing pharmacists, and  
28 to reputable hospitals approved by the board, or chemists. Sales  
29 to licensees shall be made at a price that includes a discount  
30 of [ten] twelve per centum from the retail price and the board

1 shall not charge the licensees a markup. The board may sell to  
2 registered pharmacists only such liquors as conform to the  
3 Pharmacopoeia of the United States, the National Formulary, or  
4 the American Homeopathic Pharmacopoeia. The board may sell at  
5 special prices under the regulations of the board, to United  
6 States Armed Forces facilities which are located on United  
7 States Armed Forces installations and are conducted pursuant to  
8 the authority and regulations of the United States Armed Forces.  
9 All other sales by such stores shall be at retail. A person  
10 entitled to purchase liquor at wholesale prices may purchase the  
11 liquor at any Pennsylvania Liquor Store upon tendering cash,  
12 check or credit card for the full amount of the purchase. For  
13 this purpose, the board shall issue a discount card to each  
14 licensee identifying such licensee as a person authorized to  
15 purchase liquor at wholesale prices. Such discount card shall be  
16 retained by the licensee. The board may contract through the  
17 Commonwealth bidding process for delivery to wholesale licensees  
18 at the expense of the licensee receiving the delivery.

19 \* \* \*

20 Section 3. Section 406 of the act is amended by adding a  
21 subsection to read:

22 Section 406. Sales by Liquor Licensees; Restrictions.--\* \* \*

23 (h) (1) The holder of a hotel license or a restaurant  
24 license may sell up to five bottles of wine for consumption off  
25 the licensed premises so long as the bottles of wine remain  
26 sealed.

27 (2) For purposes of this subsection, "wine" shall have the  
28 meaning given to it under section 488(i).

29 Section 4. Section 431(b) of the act, amended December 8,  
30 2004 (P.L.1810, No.239), is amended and the section is amended

1 by adding a subsection to read:

2 Section 431. Malt and Brewed Beverages Manufacturers',  
3 Distributors' and Importing Distributors' Licenses.--\* \* \*

4 (b) (1) The board shall issue to any reputable person who  
5 applies therefor, and pays the license fee hereinafter  
6 prescribed, a distributor's or importing distributor's license  
7 for the place which such person desires to maintain for the sale  
8 of malt or brewed beverages, not for consumption on the premises  
9 where sold, and in quantities of not less than a case or  
10 original containers containing one hundred twenty-eight ounces  
11 or more which may be sold separately as prepared for the market  
12 by the manufacturer at the place of manufacture. The board shall  
13 have the discretion to refuse a license to any person or to any  
14 corporation, partnership or association if such person, or any  
15 officer or director of such corporation, or any member or  
16 partner of such partnership or association shall have been  
17 convicted or found guilty of a felony within a period of five  
18 years immediately preceding the date of application for the said  
19 license: And provided further, That, in the case of any new  
20 license or the transfer of any license to a new location, the  
21 board may, in its discretion, grant or refuse such new license  
22 or transfer if such place proposed to be licensed is within  
23 three hundred feet of any church, hospital, charitable  
24 institution, school or public playground, or if such new license  
25 or transfer is applied for a place which is within two hundred  
26 feet of any other premises which is licensed by the board: And  
27 provided further, That the board shall refuse any application  
28 for a new license or the transfer of any license to a new  
29 location if, in the board's opinion, such new license or  
30 transfer would be detrimental to the welfare, health, peace and

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

26 (2) Except as hereinafter provided, such license shall  
27 authorize the holder thereof to sell or deliver malt or brewed  
28 beverages in quantities above specified anywhere within the  
29 Commonwealth of Pennsylvania, which, in the case of  
30 distributors, have been purchased only from persons licensed

1 under this act as manufacturers or importing distributors, and  
2 in the case of importing distributors, have been purchased from  
3 manufacturers or persons outside this Commonwealth engaged in  
4 the legal sale of malt or brewed beverages or from manufacturers  
5 or importing distributors licensed under this article. Should a  
6 distributor licensee apply for and receive a wine and spirits  
7 permit under section 431.2, that distributor will also be  
8 allowed to sell wine and spirits on the same premises where malt  
9 or brewed beverages are sold and to deliver such wine and  
10 spirits anywhere within this Commonwealth. In the case of an  
11 importing distributor, the holder of such a license shall be  
12 authorized to store and repackage malt or brewed beverages owned  
13 by a manufacturer at a segregated portion of a warehouse or  
14 other storage facility authorized by section 441(d) and operated  
15 by the importing distributor within its appointed territory and  
16 deliver such beverages to another importing distributor who has  
17 been granted distribution rights by the manufacturer as provided  
18 herein. The importing distributor shall be permitted to receive  
19 a fee from the manufacturer for any related storage, repackaging  
20 or delivery services. In the case of a bailee for hire hired by  
21 a manufacturer, the holder of such a permit shall be authorized:  
22 to receive, store and repackage malt or brewed beverages  
23 produced by that manufacturer for sale by that manufacturer to  
24 importing distributors to whom that manufacturer has given  
25 distribution rights pursuant to this subsection or to purchasers  
26 outside this Commonwealth for delivery outside this  
27 Commonwealth; or to ship to that manufacturer's storage  
28 facilities outside this Commonwealth. The bailee for hire shall  
29 be permitted to receive a fee from the manufacturer for any  
30 related storage, repackaging or delivery services. The bailee

1 for hire shall, as required in Article V of this act, keep  
2 complete and accurate records of all transactions, inventory,  
3 receipts and shipments and make all records and the licensed  
4 areas available for inspection by the board and for the  
5 Pennsylvania State Police, Bureau of Liquor Control Enforcement,  
6 during normal business hours.

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

27     (4) When a Pennsylvania manufacturer of malt or brewed  
28 beverages licensed under this article names or constitutes a  
29 distributor or importing distributor as the primary or original  
30 supplier of his product, he shall also designate the specific

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

24 \* \* \*

25 (b.2) In the case of an importing distributor, upon making  
26 application and payment of a fifty million dollar (\$50,000,000)  
27 fee to the board, to receive an enhanced importing distributor  
28 license that will allow the holder all the privileges of an  
29 importing distributor in addition to the authority to buy,  
30 import and have in its possession for sale to enhanced



distributor licensees under section 431.4, at wholesale, wine and spirits.

\* \* \*

Section 5. The act is amended by adding sections to read:

Section 431.2. Wine and Spirits Sales Permits for Malt and Brewed Beverage Distributors.--(a) The board shall issue to any licensed distributor of good repute who applies therefor, and pays the license fee hereinafter prescribed, a wine and spirits sales permit for the same place the licensee maintains for the sale of malt and brewed beverages. This permit shall grant the licensee the ability to sell for consumption off the licensed premises wine and liquor. The application for such permit shall be in such form and contain such information as the board shall require. All such permits shall be granted for a permit period of one year. The board may enter into an agreement with the applicant concerning additional restrictions on the permit in question. If the board and the applicant enter into such an agreement, such agreement shall be binding on the applicant. Failure by the applicant to adhere to the agreement shall be sufficient cause to form the basis for a citation under section 471 and for nonrenewal of the permit under section 470. If the board enters into an agreement with an applicant concerning additional restrictions, those restrictions shall be binding until the board enters into a subsequent agreement removing those restrictions. The board shall require notice to be posted on the property or premises upon which the licensee or proposed licensee will engage in sales of wine and liquor. This notice shall be similar to the notice required of hotel, restaurant and club liquor licensees.

(b) The fee for such permit shall be ten thousand dollars

1 (\$10,000) per year due at the time the licensee makes  
2 application for such permit to the board.

3 (c) If a distributor applies for and receives a wine and  
4 spirits sales permit for three consecutive years, in the fourth  
5 year the distributor shall, at the time of renewal of the  
6 license, register for an enhanced distributor license pursuant  
7 to section 431.4.

8 Section 431.3. Application for Wine and Spirits Sales  
9 Permits for Malt and Brewed Beverage Distributor Licensees.--

10 Application for a wine and spirits sales permit shall contain or  
11 have attached thereto the following information and statements:

12 (1) The name and residence of the applicant and how long the  
13 applicant has resided there, and if an association, partnership  
14 or corporation, the residences of the members, officers and  
15 directors for the period of two years next preceding the date of  
16 such application.

17 (2) The particular place for which the permit is desired and  
18 a detailed description thereof. The description, information and  
19 plans referred to in this paragraph shall show the premises at  
20 the time the application is made and shall show any alterations  
21 proposed to be made thereto. No physical alterations,  
22 improvements or changes shall be required to be made to any  
23 distributor, nor shall any new building for any such purpose be  
24 required to be constructed, until approval of the application  
25 for the permit of the board. After approval of the application,  
26 the permittee shall make the physical alterations, improvements  
27 and changes to the licensed premises in the manner specified by  
28 the board at the time of approval. The licensee shall not  
29 transact any business under the permit until the board has  
30 approved the completed physical alterations, improvements and

changes of the licensed premises as conforming to the  
specifications required by the board at the time of issuance of  
the permit and the board is satisfied that the premises meet the  
requirements for a wine and spirits sales permit as set forth in  
this act. The board may require that all such alterations or  
conformity to definition be completed within six months from the  
time of issuance of the permit. Failure to comply with these  
requirements shall be considered cause for revocation of the  
license. No such permit shall be transferrable.

(3) Place of birth of applicant and, if a naturalized  
citizen, where and when naturalized, and, if a corporation  
organized or registered under the laws of this Commonwealth,  
when and where incorporated, with the names and addresses of  
each officer and director, all of whom must be citizens of the  
United States. If the application is for a wine and spirits  
sales permit and the applicant thereof is a corporation, the  
application shall also contain a statement of facts showing the  
qualifications of the corporation, as required in this act,  
together with the names and addresses of all stockholders.

(4) Name of owner of premises and the owner's residence.

(5) That the applicant is not or, in case of a partnership  
or association, that the members or partners are not and, in the  
case of a corporation, that the officers and directors are not,  
in any manner pecuniarily interested, either directly or  
indirectly, in the profits of any other class of business  
regulated by this article, except as otherwise permitted in this  
act.

(6) That applicant is the only person in any manner  
pecuniarily interested in the business for which a wine and  
spirits sales permit is sought and that no other person shall be

1 in any manner pecuniarily interested therein during the  
2 continuance of the permit, except as otherwise permitted in this  
3 act.

4 (7) Whether the applicant or, in case of a partnership or  
5 association, any member or partner thereof, or, in case of a  
6 corporation, any officer or director thereof, has during the  
7 three years immediately preceding the date of the application  
8 had a license for the sale of malt or brewed beverages or  
9 spirituous and vinous liquors revoked or has during the same  
10 period been convicted of any criminal offense, and if so, a  
11 detailed history thereof.

12 (8) A full description of that portion of the premises for  
13 which the permit is sought.

14 (9) The application must be verified by affidavit of  
15 applicant and, if any false statement is intentionally made in  
16 any part of the application, the affiant shall be deemed guilty  
17 of a misdemeanor and, upon conviction, shall be subject to the  
18 penalties provided by this article.

19 Section 431.4. Enhanced Distributor's License; Fees;  
20 Privileges; Restrictions.--(a) Notwithstanding any other  
21 provision of this act to the contrary, the holder of a  
22 distributor license who has also applied for and been granted a  
23 wine and spirits sales permit for three consecutive years under  
24 section 431.2 shall convert the distributor license to an  
25 enhanced distributor license by registering with the board as an  
26 enhanced distributor licensee and paying a one-time conversion  
27 fee of fifty thousand dollars (\$50,000).

28 (b) Enhanced distributor licensees shall pay a biannual  
29 renewal fee of five thousand dollars (\$5,000) to the board. If  
30 the renewal fee is not timely paid then the enhanced distributor

1 license shall be suspended until such time as the fee is paid.

2 (c) Notwithstanding any other provision of this act to the  
3 contrary, an enhanced distributor licensee may sell wine and  
4 spirits not for consumption on the premises where sold and malt  
5 or brewed beverages, not for consumption on the premises where  
6 sold and in quantities of not less than a case or original  
7 containers containing one hundred twenty-eight ounces or more  
8 which may be sold separately as prepared for the market by the  
9 manufacturer at the place of manufacture.

10 (d) Enhanced distributor licenses shall be subject to the  
11 same quota as distributor licenses and may be transferred from  
12 person-to-person or place-to-place, or both.

13 (e) If the holder of an enhanced distributor license has  
14 been cited and found in violation of section 493(1), insofar as  
15 it relates to sales to minors or sales to visibly intoxicated  
16 persons, the administrative law judge may suspend the license or  
17 impose a fine of not less than five thousand dollars (\$5,000)  
18 nor more than twenty thousand dollars (\$20,000).

19 Section 6. Section 441 of the act is amended by adding a  
20 subsection to read:

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

23 (g.1) No distributor shall engage in the sale of wine and  
24 spirits without first obtaining a wine and spirits sales permit  
25 as provided for in section 431.2 or an enhanced distributor  
26 license as provided for in section 431.4 of this act. Sales of  
27 wine and spirits may only be made on those premises licensed for  
28 the sale of malt or brewed beverages sold in quantities greater  
29 than or equal to a case.

30 Section 7. Sections 443(a) and (b) of the act, amended May

1 31, 1996 (P.L.312, No.49), are amended to read:

2 Section 443. Interlocking Business Prohibited.--(a) No  
3 manufacturer of malt or brewed beverages and no officer or  
4 director of any such manufacturer shall at the same time be a  
5 distributor, importing distributor or retail dispenser, or an  
6 officer, director or stockholder or creditor of any distributor,  
7 importing distributor or retail dispenser, nor, except as  
8 hereinafter provided, be the owner, proprietor or lessor of any  
9 place for which a license has been issued for any importing  
10 distributor, distributor or retail dispenser, or for which a  
11 hotel, restaurant or club liquor license has been issued:  
12 Provided, however, That a holder of a manufacturer's license  
13 under section 431(a) who is eligible to operate a brewery pub  
14 under section 446(2) or a limited winery as provided for under  
15 section 505.2 may also hold and operate under a hotel liquor  
16 license, a restaurant liquor license or a malt and brewed  
17 beverages retail license on the manufacturer's or limited  
18 winery's licensed premises. The hotel liquor license or  
19 restaurant liquor license or the malt and brewed beverages  
20 retail license shall be acquired by the manufacturer or limited  
21 winery subject to section 461 and shall satisfy all requirements  
22 for each respective license; and, Provided, further, that the  
23 holder of a distributor license may also hold and operate a wine  
24 and spirits sales permit as provided for under section 431.2(a)  
25 on the distributor's licensed premises.

26 (b) No distributor or importing distributor and no officer  
27 or director of any distributor or importing distributor shall at  
28 the same time be a manufacturer, a retail dispenser or a liquor  
29 licensee, or be an officer, director, stockholder or creditor of  
30 a manufacturer, a retail dispenser or a liquor licensee, or,

1 directly or indirectly, own any stock of, or have any financial  
2 interest in, or be the owner, proprietor or lessor of, any place  
3 covered by any other malt or brewed beverage or liquor license,  
4 except as provided for in section 431.2(a) or 431.4(a).

5 \* \* \*

6 Section 8. Section 492(12), (13) and (14) of the act are  
7 amended to read:

8 Section 492. Unlawful Acts Relative to Malt or Brewed  
9 Beverages and Licensees.--

10 It shall be unlawful--

11 \* \* \*

12 (12) Distributors and Importing Distributors Engaging in  
13 Other Business. For any distributor or importing distributor, or  
14 his servants, agents or employes, without the approval of the  
15 board, and then only in accordance with board regulations, to  
16 engage in any other business whatsoever, except the business of  
17 distributing malt or brewed beverages. Provided that the holder  
18 of a distributor license who is eligible for a wine and spirits  
19 sales permit under section 431.2(a) or an enhanced distributor  
20 license under section 431.4(a) may engage in the sale of liquor  
21 and wine on the licensed premise so long as the licensee meets  
22 all of the requirements of that section.

23 [(13) Possession or Storage of Liquor or Alcohol by Certain  
24 Licensees. For any distributor, importing distributor or retail  
25 dispenser, or his servants, agents or employes, to have in his  
26 possession, or to permit the storage of on the licensed premises  
27 or in any place contiguous or adjacent thereto accessible to the  
28 public or used in connection with the operation of the licensed  
29 premises, any alcohol or liquor.]

30 (14) Malt or Brewed Beverage Licensees Dealing in Liquor or

1 Alcohol. For any malt or brewed beverage licensee, other than a  
2 distributor who holds a wine and spirits sales permit under  
3 section 431.2(a) or an enhanced distributor license under  
4 section 431.4(a) or a manufacturer, or the servants, agents or  
5 employes thereof, to manufacture, import, sell, transport,  
6 store, trade or barter in any liquor or alcohol.

7 \* \* \*

8 Section 9. This act shall take effect in 60 days.