

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 291 Session of
2009

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FEBRUARY 6, 2009

SENATOR PIPPY, LAW AND JUSTICE, IN SENATE, AS AMENDED, JUNE 15,
2010

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~~ A DEFINITION 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 "CONTRACT BREWING" SHALL MEAN THE ARRANGEMENT BY WHICH A ←
25 MANUFACTURER OF MALT OR BREWED BEVERAGES HIRES OR CONTRACTS WITH
26 ANOTHER MANUFACTURER OF MALT OR BREWED BEVERAGES TO PRODUCE ITS
27 MALT OR BREWED BEVERAGE.

28 * * *

29 "Distributor" shall mean any person licensed by the board to
30 engage in the purchase only from [Pennsylvania] ~~small~~ CERTAIN ←

1 manufacturers AUTHORIZED BY SUBSECTION (A.3) AND CERTIFIED BY ←
2 THE BOARD and from importing distributors and the resale of malt
3 or brewed beverages, except to importing distributors and
4 distributors, in the original sealed containers as prepared for
5 the market by the manufacturer at the place of manufacture, but
6 not for consumption on the premises where sold, and in
7 quantities of not less than a case or original containers
8 containing one hundred twenty-eight ounces or more which may be
9 sold separately.

10 * * *

11 ~~"Small manufacturer" shall mean a manufacturer with a maximum~~ ←
12 ~~production of seventy five thousand barrels of malt or brewed~~
13 ~~beverages per year. In determining the annual production, the~~
14 ~~small manufacturer shall include a portion of the production of~~
15 ~~any other manufacturer who holds, directly or indirectly, an~~
16 ~~ownership interest in it or with whom it has a distribution~~
17 ~~agreement in this Commonwealth. If another manufacturer holds,~~
18 ~~directly or indirectly, an ownership interest in the small~~
19 ~~manufacturer, the percentage of that interest shall be applied~~
20 ~~to the manufacturer's total production of malt or brewed~~
21 ~~beverage products to determine the amount that shall be included~~
22 ~~in determining the maximum production for the small~~
23 ~~manufacturer. If the small manufacturer has a distribution~~
24 ~~agreement with a larger manufacturer for distribution in this~~
25 ~~Commonwealth, the distributing manufacturer's total distribution~~
26 ~~in this Commonwealth shall be added to the small manufacturer's~~
27 ~~production to determine whether the seventy five thousand barrel~~
28 ~~mark has been reached. Only malt or brewed beverages for which~~
29 ~~the small manufacturer is responsible for paying the malt~~
30 ~~beverage tax shall be considered in calculating the total number~~

1 ~~of barrels produced per year by the small 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~~ EXCEPT FOR MANUFACTURERS CERTIFIED ←
25 BY THE BOARD TO ENGAGE IN SELF-DISTRIBUTION, ANY manufacturer
26 whose products are sold and delivered within this Commonwealth
27 shall be authorized: to rent, lease or otherwise acquire space
28 from an importing distributor or bailee for hire authorized by
29 this act at no more than two locations per manufacturer for use
30 of a segregated portion of a warehouse or other storage facility

1 owned or operated by the importing distributor or bailee for
2 hire at which the [out of State] manufacturer may store,
3 repackage and sell malt or brewed beverages to any importing
4 distributor to whom the [out of State] manufacturer has granted
5 distribution rights pursuant to subsection (b) or to any
6 purchaser outside this Commonwealth for delivery outside this
7 Commonwealth; or to ship to its storage facility outside this
8 Commonwealth. Such manufacturer may compensate the importing
9 distributor or bailee for hire for any related storage,
10 repackaging or delivery services. The [out of State]
11 manufacturer must file with the Liquor Control Board the rate of
12 compensation to be paid. NO MANUFACTURER MAY RENT, LEASE OR
13 OTHERWISE ACQUIRE SPACE FOR MORE THAN TWO STORAGE FACILITIES. A
14 separate written application must be filed to acquire storage
15 licenses, and the board may establish the information that must
16 be provided on the application. The initial filing must be made
17 prior to any payments being made, and any subsequent changes in
18 the rate of compensation must be filed within thirty days of any
19 such change. Nothing in this act authorizing storage facilities
20 for [out of State] manufacturers is intended to make any change
21 in the manner malt or brewed beverages are distributed through
22 the three-tier system.

23 [(a.2) The board shall issue to ~~a~~ holder of a
24 manufacturer's license] ~~a manufacturer~~ no more than two storage
25 licenses per manufacturer to cover storage facilities separate
26 from the location of the manufacturing facility. A manufacturer
27 may use its storage facilities to receive, store, repackage,
28 sell ~~to an importing distributor or distributor~~ and distribute
29 malt or brewed beverages in the same manner as it can at its
30 place of manufacture or it may rent, lease or otherwise acquire

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

13 ~~(a.3) In order to continue to be eligible as a small~~ ←
14 ~~manufacturer, the small manufacturer may not produce in excess~~
15 ~~of seventy five thousand barrels of malt or brewed beverages per~~
16 ~~year, as calculated under section 102. The board shall certify~~
17 ~~that a manufacturer is eligible as a small manufacturer upon the~~
18 ~~written request of the manufacturer, on a form prescribed by the~~
19 ~~board, for such certification. A request for certification may~~
20 ~~be submitted by a manufacturer that holds a manufacturer's~~
21 ~~license and believes it is eligible as a small manufacturer or~~
22 ~~it may be submitted by a manufacturer for a manufacturer's~~
23 ~~license.~~

24 ~~(a.4) A small manufacturer that is located outside of this~~
25 ~~Commonwealth and holds a manufacturer's license is deemed to~~
26 ~~have submitted to the jurisdiction of the board, any other~~
27 ~~Commonwealth agency and the courts of this Commonwealth for~~
28 ~~purposes of enforcement of this section and any related laws,~~
29 ~~rules or regulations. The small manufacturer shall also be~~
30 ~~subject to citation by the enforcement bureau under section 471~~

~~and nonrenewal by the board under section 470. The Department of Revenue may promulgate regulations requiring the filing of periodic reports by a small manufacturer subject to the provisions of this subsection to ensure compliance with the provisions of this section.~~

~~(a.5) A small manufacturer that holds a valid manufacturer's license may deliver malt or brewed beverages it has manufactured to any holder of any retail license issued by the board if it uses its own vehicles. A small manufacturer may not use the services of a transporter for hire or other commercial carrier to deliver malt or brewed beverages in this Commonwealth. A small manufacturer that delivers malt or brewed beverages under this subsection shall not be entitled to utilize storage services or facilities otherwise available under subsection (a.1) or (a.2).~~

(A.3) ANY MANUFACTURER OF MALT OR BREWED BEVERAGES THAT HOLDS A VALID MANUFACTURER'S LICENSE AND WHOSE TOTAL PRODUCTION IN THE PRIOR CALENDAR YEAR DID NOT EXCEED ONE HUNDRED FIFTY THOUSAND BARRELS AND WHICH HAS BEEN CERTIFIED BY THE BOARD AS ELIGIBLE TO ENGAGE IN SELF-DISTRIBUTION MAY DELIVER ANNUALLY UP TO SEVENTY-FIVE THOUSAND BARRELS OF MALT OR BREWED BEVERAGES THAT IS HAS MANUFACTURED OR HAS HAD CONTRACT-BREWED FOR IT, EXCLUDING MALT OR BREWED BEVERAGES THAT IT HAS CONTRACT-BREWED FOR ANOTHER, DIRECTLY TO ANY HOLDER OF ANY HOTEL, CLUB, RESTAURANT, EATING PLACE RETAIL DISPENSER, IMPORTING DISTRIBUTOR OR DISTRIBUTOR LICENSE ISSUED BY THE BOARD. A MANUFACTURER OF MALT OR BREWED BEVERAGES THAT ENGAGES IN SELF-DISTRIBUTION MAY USE ITS OWN VEHICLES, LEASED VEHICLES OR THE SERVICES OF A TRANSPORTER FOR HIRE OR OTHER COMMON CARRIER TO DELIVER SUCH QUANTITY OF THIS MALT OR BREWED BEVERAGES TO THE HOLDER OF ANY



HOTEL, CLUB, RESTAURANT, EATING PLACE RETAIL DISPENSER,
IMPORTING DISTRIBUTOR OR DISTRIBUTOR LICENSE ISSUED BY THE BOARD
IN THIS COMMONWEALTH. A MANUFACTURER OF MALT OR BREWED BEVERAGES
THAT ENGAGES IN SELF-DISTRIBUTION MAY NOT TERMINATE ITS PRIMARY
RELATIONSHIP WITH AN IMPORTING DISTRIBUTOR IN FAVOR OF SELF-
DISTRIBUTION OF ANY BRAND OR BRANDS PREVIOUSLY DISTRIBUTED BY
SUCH IMPORTING DISTRIBUTOR UNLESS THE TERMINATION COMPLIES WITH
SECTION 431(D) (4) .

(A.4) IN ORDER TO BE ELIGIBLE AND CONTINUE TO BE ELIGIBLE
FOR THE SELF-DISTRIBUTION RIGHTS SET FORTH IN THIS SECTION, A
MANUFACTURER OF MALT OR BREWED BEVERAGES MUST SUBMIT INFORMATION
AS REQUIRED BY THE BOARD ON A FORM AND AT SUCH TIMES AS
PRESCRIBED BY THE BOARD. THIS INFORMATION SHALL INCLUDE A
CERTIFICATION THAT TOTAL PRODUCTION DID NOT EXCEED ONE HUNDRED
FIFTY THOUSAND BARRELS IN THE PRIOR CALENDAR YEAR AND
AFFIRMATION THAT SELF-DISTRIBUTION WILL NOT EXCEED THE ANNUAL
BARRELAGE LIMITS SET FORTH IN THIS SECTION. THE BOARD SHALL
REVIEW THE WRITTEN REQUEST OF THE MANUFACTURER AND GRANT
CERTIFICATION IF THE MANUFACTURER MEETS THE REQUIREMENT OF THIS
SECTION. IN DETERMINING THE ANNUAL BARREL PRODUCTION, THE BOARD
SHALL INCLUDE A PORTION OF THE PRODUCTION OF ANY OTHER
MANUFACTURER WHO HOLDS, DIRECTLY OR INDIRECTLY, AN OWNERSHIP
INTEREST IN THIS APPLICANT OR WITH WHOM THIS APPLICANT HAS A
DISTRIBUTION AGREEMENT IN THIS COMMONWEALTH. IF ANOTHER
MANUFACTURER HOLDS, DIRECTLY OR INDIRECTLY, AN OWNERSHIP
INTEREST IN THE APPLICANT, THE PERCENTAGE OF THAT INTEREST SHALL
BE MULTIPLIED BY THE OWNING MANUFACTURER'S TOTAL PRODUCTION OF
MALT OR BREWED BEVERAGE PRODUCTS TO DETERMINE THE AMOUNT THAT
SHALL BE ADDED IN DETERMINING THE PRODUCTION OF THE APPLICANT.
IF THE APPLICANT HAS A DISTRIBUTION AGREEMENT WITH ANOTHER

1 MANUFACTURER FOR DISTRIBUTION IN THIS COMMONWEALTH, THE
2 DISTRIBUTING MANUFACTURER'S TOTAL SELF-DISTRIBUTION IN THIS
3 COMMONWEALTH SHALL BE ADDED TO THE MANUFACTURER'S SELF-
4 DISTRIBUTION TO DETERMINE WHETHER THE SEVENTY-FIVE THOUSAND
5 BARREL MARK HAS BEEN REACHED. ONLY SUCH MALT OR BREWED BEVERAGES
6 FOR WHICH THE MANUFACTURER IS RESPONSIBLE FOR PAYING THE MALT
7 BEVERAGE TAX SHALL BE CONSIDERED IN CALCULATING THE TOTAL NUMBER
8 OF BARRELS PRODUCED PER YEAR BY THE MANUFACTURER, EXCEPT TO THE
9 EXTENT PROVIDED IN THIS SUBSECTION FOR ADJUSTMENT IN THE CASE OF
10 AN OWNING MANUFACTURER OR A MANUFACTURER WITH WHICH IT HAS A
11 DISTRIBUTION AGREEMENT.

12 (A.5) PRIOR TO BEING CERTIFIED TO ENGAGE IN SELF-
13 DISTRIBUTION, A MANUFACTURER OF MALT OR BREWED BEVERAGES THAT
14 HOLDS A MANUFACTURER'S LICENSE, IF NOT ALREADY REGISTERED IN
15 THIS COMMONWEALTH, SHALL OBTAIN A CERTIFICATE OF AUTHORITY TO DO
16 BUSINESS IN THIS COMMONWEALTH FROM THE CORPORATION BUREAU OF THE
17 DEPARTMENT OF STATE. BY SUBMITTING AN APPLICATION TO ENGAGE IN
18 SELF-DISTRIBUTION, A MANUFACTURER OF MALT OR BREWED BEVERAGES IS
19 DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THE BOARD, ANY
20 OTHER COMMONWEALTH AGENCY AND THE COURTS OF THIS COMMONWEALTH
21 FOR PURPOSES OF ENFORCEMENT OF THIS SECTION AND ANY RELATED
22 LAWS, RULES OR REGULATIONS. THE MANUFACTURER SHALL ALSO BE
23 SUBJECT TO AND COMPLY WITH SECTION 444. THE DEPARTMENT OF
24 REVENUE MAY PROMULGATE REGULATIONS REQUIRING THE FILING OF
25 PERIODIC REPORTS BY ANY MANUFACTURER SUBJECT TO THIS SUBSECTION
26 TO ENSURE COMPLIANCE WITH THIS SECTION.

27 (A.6) A MANUFACTURER OF MALT OR BREWED BEVERAGES THAT HAS
28 BEEN CERTIFIED AS ELIGIBLE TO ENGAGE IN SELF-DISTRIBUTION MAY
29 DISTRIBUTE MALT OR BREWED BEVERAGES IT HAS MANUFACTURED TO THE
30 HOLDER OF ANY IMPORTING DISTRIBUTOR, DISTRIBUTOR OR HOTEL, CLUB,

RESTAURANT, EATING PLACE RETAIL DISPENSER LICENSE ISSUED BY THE
BOARD IF IT USES ITS OWN VEHICLES WHICH ARE MARKED AND
IDENTIFIED AS REQUIRED PURSUANT TO BOARD REGULATIONS, OR USES
THE SERVICES OF A TRANSPORTER-FOR-HIRE. A MANUFACTURER THAT
DISTRIBUTES MALT OR BREWED BEVERAGES UNDER THIS SUBSECTION SHALL
NOT BE ENTITLED TO UTILIZE FOR SALES OR DELIVERIES TO IMPORTING
DISTRIBUTOR, DISTRIBUTOR OR HOTEL, CLUB, RESTAURANT OR EATING
PLACE RETAIL DISPENSER LICENSEES STORAGE SERVICES OR FACILITIES
OTHERWISE AVAILABLE UNDER SUBSECTION (A.1).

(b) The board shall issue to any reputable person who
applies therefor, and pays the license fee hereinafter
prescribed, a distributor's or importing distributor's license
for the place which such person desires to maintain for the sale
of malt or brewed beverages, 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 as prepared for the market
by the manufacturer at the place of manufacture. The board shall
have the discretion to refuse a license to any person or to any
corporation, partnership or association if such person, or any
officer or director of such corporation, or any member or
partner of such partnership or association shall have been
convicted or found guilty of a felony within a period of five
years immediately preceding the date of application for the said
license: And provided further, That, in the case of any new
license or the transfer of any license to a new location, the
board may, in its discretion, grant or refuse such new license
or transfer if such place proposed to be licensed is within
three hundred feet of any church, hospital, charitable
institution, school or public playground, or if such new license

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

1 of hotel, restaurant and club liquor licensees.

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

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

8 Each [out of State] manufacturer of malt or brewed beverages,

9 ~~excluding small manufacturers~~ EXCEPT FOR THOSE MANUFACTURERS OF
10 MALT OR BREWED BEVERAGES CERTIFIED AS ELIGIBLE TO ENGAGE IN

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

30 When a [Pennsylvania] ~~small~~ manufacturer of malt or brewed

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

27 (b.1) (1) Any person in this Commonwealth or elsewhere who
28 shall purchase or in any manner whatsoever acquire or otherwise
29 succeed to the business of a manufacturer, assets or rights to
30 import, market, ship into this Commonwealth or distribute a

1 brand of beer, or to use and exploit any trademark incorporated
2 as part of a brand of beer produced by such a manufacturer shall
3 be obligated to all terms of the manufacturer's franchise
4 agreements in effect on the effective date of the purchase,
5 acquisition or succession, or, if earlier, at the time the
6 agreement contemplating the purchase, acquisition or succession
7 is actually made.

8 (2) "Purchase" or "acquisition," for purposes of this
9 section, includes, but is not limited to, a purchase,
10 acquisition, lease, license or assignment of all or a
11 controlling interest in the capital stock or operating assets,
12 including brand trademarks rights; merger; any corporate
13 reorganization or consolidation; and also, without limitation,
14 any license, cross-license, joint venture or other agreement or
15 arrangement, directly or indirectly, transferring, substituting
16 or materially changing the person or persons authorized by the
17 one owning or controlling a brand or any trademark as part of a
18 brand, to produce, import, ship, market or distribute the brand
19 of beer into or within this Commonwealth.

20 (3) "Manufacturer," as used in this subsection, shall mean
21 any person, including any agent of such person, who (i) is
22 licensed as a manufacturer of malt or brewed beverages located
23 within the Commonwealth of Pennsylvania, (ii) holds a
24 distributor or importing distributor license, or (iii)
25 manufactures any malt beverage, has title to any malt beverage
26 products or has the contractual right to distribute any malt
27 beverage product, whether licensed in this Commonwealth or not,
28 who enters into an "agreement" with any importing distributor
29 licensed to do business in this Commonwealth.

30 (B.2) ANY SECONDARY RELATIONSHIP BETWEEN AN IMPORTING



1 DISTRIBUTOR AND A MANUFACTURER EXISTING AS OF THE EFFECTIVE DATE
2 OF THIS SUBSECTION SHALL REMAIN IN EFFECT AND SHALL NOT BE
3 SUBJECT TO THIS SECTION, EXCEPT TO THE EXTENT REQUIRED BY THE
4 SEVERABILITY PROVISIONS OF THIS AMENDATORY ACT ADDING THIS
5 SUBSECTION.

6 (B.3) ANY MANUFACTURER OF MALT OR BREWED BEVERAGES THAT
7 BREWS SOME OR ALL OF ITS PRODUCT IN A BREWERY BUILDING THAT IS
8 MORE THAN ONE HUNDRED FIFTY YEARS OLD AND WHOSE PRINCIPAL
9 CORPORATE OFFICE IS LOCATED IN THAT BUILDING MAY ENGAGE IN
10 DIRECT SALES TO LICENSEES WHO ARE LICENSED ON THE EFFECTIVE DATE
11 OF THIS SUBSECTION AND WHOSE PRINCIPAL PLACE OF BUSINESS IS IN
12 THE SAME COUNTY AS THE BREWERY, AND TO NONLICENSEES, ALL SUBJECT
13 TO THE RESTRICTIONS STATED HEREIN, WITHOUT THE REQUIREMENT OF
14 FIRST BEING SOLD TO IMPORTING DISTRIBUTORS AND DISTRIBUTORS.
15 SALES UNDER THIS SUBSECTION SHALL BE FOR PICKUP ONLY AT THE
16 BREWERY OF PRODUCT THAT WAS BREWED IN THIS COMMONWEALTH, AND
17 SHALL BE IN SUCH QUANTITIES AND PACKAGE CONFIGURATIONS AS ARE
18 OTHERWISE AUTHORIZED BY LAW FOR SALE BY MANUFACTURERS OF MALT OR
19 BREWED BEVERAGES. ANY SUCH PRODUCT PICKED UP BY LICENSEES AT THE
20 BREWERY SHALL NOT BE RESOLD TO OTHER LICENSEES WHOSE PRINCIPAL
21 PLACE OF BUSINESS IS OUTSIDE THE COUNTY WHERE THE BREWERY IS
22 LOCATED.

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

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

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

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

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

1 this act.

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

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

1 (5) [The provisions of this subsection shall not apply to
2 ~~{Pennsylvania} small~~ manufacturers ~~{whose principal place of~~
3 ~~business is located in Pennsylvania}~~ unless they name or
4 constitute a distributor or importing distributor as a primary
5 or original supplier of their products subsequent to the
6 effective date of this act, or unless such ~~{Pennsylvania} small~~
7 manufacturers have named or constituted a distributor or
8 importing distributor as a primary or original supplier of their
9 products prior to the effective date of this act, and which
10 status is continuing when this act becomes effective.]

11 NOTWITHSTANDING THE REQUIREMENTS OF PARAGRAPH (1) AND SECTION
12 492(19), SUBJECT TO THE LIMITATIONS SET FORTH IN THIS
13 SUBSECTION, UNLESS THE PARTIES MUTUALLY AGREE TO THE CONTRARY IN
14 THEIR WRITTEN AGREEMENT, A MANUFACTURER OF MALT OR BREWED
15 BEVERAGES WHOSE TOTAL PRODUCTION IN THE PRIOR TWELVE COMPLETE
16 CALENDAR MONTHS, CALCULATED AS SET FORTH IN SUBSECTION (A.4),
17 DID NOT EXCEED ONE HUNDRED FIFTY THOUSAND BARRELS OF MALT OR
18 BREWED BEVERAGES MAY MODIFY, CANCEL, TERMINATE OR RESCIND AN
19 AGREEMENT ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS
20 SUBSECTION WITH AN IMPORTING DISTRIBUTOR OR DISTRIBUTOR WITHOUT
21 GOOD CAUSE AS PERMITTED BY THIS SUBSECTION. TERMINATION WITHOUT
22 GOOD CAUSE IS PERMITTED ONLY IF:

23 (A) THE MANUFACTURER GIVES PRIOR WRITTEN NOTICE OF THE DATE
24 OF TERMINATION TO THE IMPORTING DISTRIBUTOR OR DISTRIBUTOR. THE
25 DATE OF TERMINATION SHALL BE NOT LESS THAN ONE HUNDRED EIGHTY
26 DAYS AFTER THE IMPORTING DISTRIBUTOR OR DISTRIBUTOR'S RECEIPT OF
27 SUCH NOTICE. THE NOTICE SHALL INCLUDE AN AFFIDAVIT EXECUTED BY
28 THE MANUFACTURER ATTESTING THAT ITS TOTAL PRODUCTION IN THE
29 TWELVE COMPLETE CALENDAR MONTHS IMMEDIATELY PRECEDING THE NOTICE
30 OF TERMINATION, CALCULATED AS SET FORTH IN SUBSECTION (A.4), DID

1 NOT EXCEED ONE HUNDRED FIFTY THOUSAND BARRELS OF MALT OR BREWED
2 BEVERAGES;

3 (B) THE BRAND OR BRANDS BEING TERMINATED REPRESENTED THREE
4 PER CENTUM OR LESS OF THE AGGREGATE CASE EQUIVALENT SALES VOLUME
5 OF MALT OR BREWED BEVERAGES SOLD BY THE IMPORTING DISTRIBUTOR OR
6 DISTRIBUTOR DURING THE TWELVE COMPLETE CALENDAR MONTHS SET FORTH
7 IN CLAUSE (A); AND

8 (C) THE MANUFACTURER PAYS TO THE IMPORTING DISTRIBUTOR OR
9 DISTRIBUTOR PRIOR TO THE EFFECTIVE DATE OF TERMINATION THE FAIR
10 MARKET VALUE OF THE IMPORTING DISTRIBUTOR'S OR DISTRIBUTOR'S
11 BUSINESS WITH RESPECT TO THE TERMINATED BRAND OR BRANDS.

12 EACH IMPORTING DISTRIBUTOR OR DISTRIBUTOR WHO RECEIVES A
13 NOTICE OF TERMINATION SHALL, WITHIN FORTY-FIVE DAYS AFTER
14 RECEIPT OF SUCH NOTICE, PROVIDE THE MANUFACTURER A WRITTEN
15 AFFIDAVIT ATTESTING TO THE PERCENTAGE OF THE TOTAL CASE
16 EQUIVALENT SALES VOLUME OF MALT OR BREWED BEVERAGES SOLD BY THE
17 IMPORTING DISTRIBUTOR OR DISTRIBUTOR THAT THE BRAND OR BRANDS TO
18 BE TERMINATED REPRESENTED DURING THE TWELVE COMPLETE CALENDAR
19 MONTHS AS SET FORTH IN CLAUSE (A). FAILURE OF AN IMPORTING
20 DISTRIBUTOR OR DISTRIBUTOR TO PROVIDE AN AFFIDAVIT TO THE
21 MANUFACTURER WITHIN THE FORTY-FIVE DAYS SHALL BE DEEMED AN
22 ADMISSION THAT THE MANUFACTURER REPRESENTS THREE PER CENTUM OR
23 LESS OF THE AGGREGATE CASE EQUIVALENT SALES VOLUME OF MALT OR
24 BREWED BEVERAGES SOLD BY THE IMPORTING DISTRIBUTOR OR
25 DISTRIBUTOR DURING THE PRIOR TWELVE COMPLETED CALENDAR MONTHS AS
26 SET FORTH IN CLAUSE (A).

27 IF THE MANUFACTURER AND THE IMPORTING DISTRIBUTOR OR
28 DISTRIBUTOR CANNOT AGREE ON THE FAIR MARKET VALUE OF THE
29 IMPORTING DISTRIBUTOR'S OR DISTRIBUTOR'S BUSINESS WITH RESPECT
30 TO THE TERMINATED BRAND OR BRANDS TO BE PAID, EITHER PARTY MAY

BRING AN ACTION IN THE COURT OF COMMON PLEAS TO DETERMINE SUCH
FAIR MARKET VALUE AND TO RESOLVE ANY OTHER ISSUES IN DISPUTE.
FOR PURPOSES OF THIS SUBSECTION, "FAIR MARKET VALUE" MEANS THE
AMOUNT A WILLING SELLER, UNDER NO COMPULSION TO SELL, WOULD BE
WILLING TO ACCEPT, AND A WILLING BUYER, UNDER NO COMPULSION TO
PURCHASE, WOULD BE WILLING TO PAY FOR THE IMPORTING
DISTRIBUTOR'S OR DISTRIBUTOR'S BUSINESS WITH RESPECT TO THE
TERMINATED BRAND OR BRANDS WHERE BOTH HAVE KNOWLEDGE OF THE
RELEVANT FACTS.

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

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

1 State manufacturer and come to rest at the in State
2 manufacturer's licensed facility.

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

6 Section 3. Section 431.1(d) of the act, added February 21,
7 2002 (P.L.103, No.10), is amended to read:

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

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

18 * * *

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

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

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

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

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

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

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

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

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

1 areas through the distribution system required for [out-of-
2 State] manufacturers under section 431(b) as well as all other
3 pertinent sections of this act.] The manufacturer of the
4 beverages must comply with section 444.

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

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

28 SECTION 6. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY
29 PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR
30 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT

1 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN
2 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

3 Section 7. This act shall take effect ~~as follows:~~ ←

4 ~~(1) The requirement in section 431(b) that certain~~
5 ~~manufacturers are required to give distribution rights for~~
6 ~~their products in this Commonwealth shall take effect in 150~~
7 ~~days.~~

8 ~~(2) This section shall take effect immediately.~~

9 ~~(3) The remainder of this act shall take effect in 60~~
10 ~~days~~ IN 90 DAYS. ←