

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1666 Session of
2013

INTRODUCED BY TOBASH, VEREB, GABLER, KNOWLES, CORBIN, MILLARD,
HELM, COHEN, SANKEY, SIMMONS, GIBBONS, KILLION, EVERETT AND
FREEMAN, AUGUST 29, 2013

REFERRED TO COMMITTEE ON LIQUOR CONTROL, AUGUST 29, 2013

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 for breweries and for unlawful acts relative to malt or
23 brewed beverages and licensees.

24 This act shall be construed as an enactment of the General
25 Assembly's support for the 3-tier system for alcoholic beverages
26 production, subject to certain rights of a manufacturer,
27 distribution and sale that, through uniform Statewide
28 regulation, provides this Commonwealth regulatory authority over

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

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

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

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

22 * * *

23 "Contract brewed" shall mean the arrangement by which a
24 manufacturer hires another manufacturer to produce its malt or
25 brewed beverage.

26 * * *

27 "Distributor" shall mean any person licensed by the board to
28 engage in the purchase [only from Pennsylvania] from
29 manufacturers and [from] importing distributors and the resale
30 of malt or brewed beverages, except to importing distributors

1 and distributors, in the original sealed containers as prepared
2 for the market by the manufacturer at the place of manufacture,
3 but not for consumption on the premises where sold, and in
4 quantities of not less than a case or original containers
5 containing one hundred twenty-eight ounces or more which may be
6 sold separately.

7 * * *

8 Section 2. Section 431(a.1), (a.2), (b), (d) and (f) of the
9 act, amended or added December 20, 1996 (P.L.1513, No.196) and
10 December 8, 2004 (P.L.1810, No.239), are amended and the section
11 is amended by adding subsections to read:

12 Section 431. Malt and Brewed Beverages Manufacturers',
13 Distributors' and Importing Distributors' Licenses.--* * *

14 (a.1) Any [out of State] manufacturer whose products are
15 sold and delivered within this Commonwealth shall be authorized:
16 to rent, lease or otherwise acquire space from an importing
17 distributor or bailee for hire authorized by this act at no more
18 than two locations per manufacturer for use of a segregated
19 portion of a warehouse or other storage facility owned or
20 operated by the importing distributor or bailee for hire at
21 which the [out of State] manufacturer may store, repackage and
22 sell malt or brewed beverages to any importing distributor to
23 whom the [out of State] manufacturer has granted distribution
24 rights pursuant to subsection (b) or to any purchaser outside
25 this Commonwealth for delivery outside this Commonwealth; or to
26 ship to its storage facility outside this Commonwealth. Such
27 manufacturer may compensate the importing distributor or bailee
28 for hire for any related storage, repackaging or delivery
29 services. [The out of State] In order to use a storage facility
30 as set forth under this subsection, the manufacturer must file

1 with the Liquor Control Board the rate of compensation to be
2 paid. A separate written application must be filed to acquire
3 storage licenses, and the board may establish the information
4 that must be provided on the application. The initial filing
5 must be made prior to any payments being made, and any
6 subsequent changes in the rate of compensation must be filed
7 within thirty days of any such change. [Nothing in this act
8 authorizing storage facilities for out of State manufacturers is
9 intended to make any change in the manner malt or brewed
10 beverages are distributed through the three-tier system.]

11 (a.2) The board shall issue to a holder of a manufacturer's
12 license no more than two total storage licenses per
13 manufacturer, as set forth under subsection (a.1), to cover
14 storage facilities separate from the location of the
15 manufacturing facility. A manufacturer may use its storage
16 facilities to receive, store, repackage, sell and distribute
17 malt or brewed beverages in the same manner as it can at its
18 place of manufacture or it may rent, lease or otherwise acquire
19 space from an importing distributor or bailee for hire
20 authorized by this act in the same manner as an out of State
21 manufacturer as set forth in subsection (a.1). A separate
22 written application must be filed to acquire storage licenses,
23 and the board is empowered to establish what information must be
24 provided on that application. Nothing in this act authorizing
25 off-site storage facilities for manufacturers is intended to
26 make any change in the manner malt or brewed beverages are
27 distributed through the three-tier system.

28 (a.3) The following shall apply:

29 (1) Any manufacturer that holds a valid manufacturer's
30 license may deliver up to seventy-five thousand total barrels of

1 malt or brewed beverages, to which it owns the brand rights and
2 that it has manufactured or has had contract brewed for it by
3 another manufacturer, directly to any holder of any license
4 issued by the board per year. A manufacturer may not directly
5 deliver malt or brewed beverages that it has contract brewed for
6 another.

7 (2) A manufacturer may use its own vehicles, leased vehicles
8 or the services of a transporter-for-hire or other common
9 carrier to deliver malt or brewed beverages to the holder of any
10 license issued by the board within this Commonwealth.

11 (3) A manufacturer may not terminate its primary
12 relationship with an importing distributor in favor of self-
13 distribution under this subsection except as otherwise permitted
14 under this act.

15 (a.4) In order to be eligible for self-distribution rights,
16 a manufacturer must submit verification information to the
17 board, including a certification that such self-distribution
18 does not exceed the barrelage limits under this subsection and
19 that the barrelage calculation includes the manufacture of all
20 brands of the manufacturer. The board shall certify that the
21 manufacturer is eligible for such self-distribution by reviewing
22 the written request of the manufacturer, on a form and at such
23 times prescribed by the board, for such certification. A request
24 for certification may be submitted by any manufacturer that
25 holds a manufacturer's license and believes it is eligible for
26 self-distribution.

27 (a.5) In addition to compliance under section 444, a
28 manufacturer that is located outside this Commonwealth and that
29 holds a manufacturer's license is deemed to have submitted to
30 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. The manufacturer shall also be subject to citation by the enforcement bureau under section 471 and nonrenewal under section 470. The Department of Revenue may promulgate regulations requiring the filing of periodic reports by a manufacturer subject to the provisions of this subsection to ensure compliance with the provisions of this section.

(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 or transfer is applied for a place which is within two hundred

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

1 Except as hereinafter provided, such license shall authorize
2 the holder thereof to sell or deliver malt or brewed beverages
3 in quantities above specified anywhere within the Commonwealth
4 of Pennsylvania, which, in the case of distributors, have been
5 purchased only from persons licensed under this act as
6 manufacturers or importing distributors, and in the case of
7 importing distributors, have been purchased from manufacturers
8 or persons outside this Commonwealth engaged in the legal sale
9 of malt or brewed beverages or from manufacturers or importing
10 distributors licensed under this article. 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 [Each out of State manufacturer] Except as otherwise provided
8 in subsection (a.3), each manufacturer of malt or brewed
9 beverages whose products are sold and delivered in this
10 Commonwealth shall give distributing rights for such products in
11 designated geographical areas to specific importing
12 distributors, and such importing distributor shall not sell or
13 deliver malt or brewed beverages manufactured by the [out of
14 State] manufacturer to any person issued a license under the
15 provisions of this act whose licensed premises are not located
16 within the geographical area for which he has been given
17 distributing rights by such manufacturer. Should a licensee
18 accept the delivery of such malt or brewed beverages in
19 violation of this section, said licensee shall be subject to a
20 suspension of his license for at least thirty days: Provided,
21 That [the importing distributor holding such distributing rights
22 for such product shall not sell or deliver the same to another
23 importing distributor without first having entered into a
24 written agreement with the said secondary importing distributor
25 setting forth the terms and conditions under which such products
26 are to be resold within the territory granted to the primary
27 importing distributor by the manufacturer.

28 When a Pennsylvania manufacturer of malt or brewed beverages
29 licensed under this article names or constitutes a distributor
30 or importing distributor as the primary or original supplier of

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

25 * * *

26 (d) (1) The following shall apply:

27 (i) All distributing rights as hereinabove required shall be
28 in writing, shall be equitable in their provisions [and], shall
29 include all territorial assignments, shall be renegotiated in
30 good faith by the fifth anniversary of any written agreement,

1 shall be substantially similar as to terms and conditions with
2 all other distributing rights agreements between the
3 manufacturer giving such agreement and its other importing
4 distributors [and distributors], shall not be modified,
5 canceled, terminated or rescinded by the manufacturer without
6 good cause, [and] shall give notice and the opportunity to
7 rectify any claimed deficiency in accordance with section
8 492(19), unless otherwise expressly provided for in this act and
9 shall contain a provision in substance or effect as follows:
10 "The manufacturer recognizes that the importing distributor and
11 distributor are free to manage their business in the manner the
12 importing distributor and distributor deem best and that this
13 prerogative vests in the importing distributor and distributor
14 the exclusive right to establish a selling price, to select the
15 brands of malt or brewed beverages they wish to handle and to
16 determine the efforts and resources which the importing
17 distributor and distributor will exert to develop and promote
18 the same of the manufacturer's products handled by the importing
19 distributor and distributor. However, the manufacturer expects
20 that the importing distributor and distributor will price
21 competitively the products handled by them, devote reasonable
22 effort and resources to the sale of such products and maintain a
23 reasonable sales level.["] The importing distributor and the
24 manufacturer agree to act in good faith with respect to all
25 aspects of this agreement and the importing distributor agrees
26 to not unfairly allocate its resources and efforts to brands of
27 a competitor." Each written agreement between a manufacturer and
28 an importing distributor shall conform to the provisions of this
29 section and shall set forth all essential, commercially
30 acceptable, fair and reasonable terms, requirements and

conditions of the business relationship between the manufacturer
and the importing distributor, including, but not limited to:

(A) Termination of the relationship, with or without good
cause.

(B) The duties and responsibilities of each party.

(C) Changes in ownership.

(ii) In the event an importing distributor's license is
suspended for more than five days, a manufacturer whose products
are distributed by such importing distributor may self-
distribute such products directly to the holders of any license
in the designated geographic territory granted to the importing
distributor by the manufacturer during the time period of the
suspension without regard to the limitations set forth under
subsection (a.3).

(iii) The following shall apply:

(A) Upon thirty days' written notice, a manufacturer may
modify, cancel, terminate or rescind, in whole or in part, an
agreement pertaining to the distribution of the manufacturer's
brands with an existing importing distributor without good cause
at any time as long as the manufacturer pays to the importing
distributor the fair market value of the importing distributor's
business with respect to the modified, canceled, terminated or
rescinded brand or brands: Provided, That such modification,
cancellation, termination or rescission shall not be permitted,
and shall be enjoined by a competent court of common pleas in
this Commonwealth, where the volume of such brand or brands
accounts for more than twenty per centum (20%) of the entire
volume distributed by the importing distributor. In the event
the manufacturer's modified, canceled, terminated or rescinded
brand or brands constitute twenty per centum (20%) or less of

1 the importing distributor's total volume, the manufacturer shall
2 be free to appoint another importing distributor or to self-
3 distribute in accordance with the provisions of this act after
4 thirty days' written notice and upon the manufacturer's payment
5 to the importing distributor of all of the manufacturer's
6 inventory at such importing distributor, plus laid-in cost.

7 (B) In determining the annual production of a manufacturer
8 under this subparagraph:

9 (I) the manufacturer of malt or brewed beverages shall
10 include all brands produced by the manufacturer and every
11 portion of the production of any other manufacturer who holds,
12 directly or indirectly, an ownership interest in the
13 manufacturer or with whom the manufacturer has a distribution
14 agreement in this Commonwealth; and

15 (II) any barrelage which is contract brewed by a
16 manufacturer for and on behalf of another manufacturer will not
17 be considered as part of the brewing manufacturer's barrelage
18 and will be considered as part of the barrelage of the
19 manufacturer for which the malt or brewed beverage is contract
20 brewed.

21 (C) For purposes of this subparagraph and in the absence of
22 any contractual provisions defining the term, "fair market
23 value" means the amount a willing seller, under no compulsion to
24 sell, would be willing to accept, and a willing buyer, under no
25 compulsion to purchase, would be willing to pay for the
26 importing distributor's business with respect to the modified,
27 canceled, terminated or rescinded brand or brands where both
28 have knowledge of the relevant facts.

29 (iv) ["Good cause" shall mean the failure by any party to an
30 agreement, without reasonable excuse or justification, to comply

1 substantially with an essential, reasonable and commercially
2 acceptable requirement imposed by the other party under the
3 terms of an agreement.] For the purposes of modification,
4 cancellation, termination or rescission, "good cause" shall mean
5 any of the following:

6 (A) The failure or refusal of the importing distributor,
7 without reasonable excuse or justification, to comply
8 substantially with a material provision of the distribution
9 agreement, including, without limitation, any provisions
10 establishing standards of performance and termination with or
11 without cause, which provision is essential, commercially
12 acceptable, fair and reasonable.

13 (B) Suspension of the importing distributor's State or
14 Federal permit or license for more than thirty days.

15 (C) The indictment or conviction of the importing
16 distributor, or of a partner or individual who owns ten per
17 centum (10%) or more of the partnership, stock or other
18 ownership interest of the importing distributor, of a felony
19 related to the business of the importing distributor which might
20 reasonably be expected to adversely affect the good will or
21 interest of the manufacturer: Provided, That in the event of an
22 indictment or conviction of a partner or individual who owns ten
23 per centum or more of the partnership, stock or other ownership
24 interest of the importing distributor, no such termination shall
25 be effective if, within the ninety-day period for the importing
26 distributor to rectify a deficiency described under section 4-
27 492(19), the individual owner divests all ownership interests in
28 the importing distributor to the extent required by the
29 discretion of the board.

30 (D) Fraudulent conduct by the importing distributor in its

1 dealings with the manufacturer or the manufacturer's products.

2 (E) A sale of a material quantity of the manufacturer's
3 brands outside of the agreed upon geographic sales territory
4 granted to the importing distributor by the manufacturer, which
5 sale was known or should have been known through the exercise of
6 business practices commonly used in the industry, to the owners
7 or senior management of the importing distributor.

8 (F) If any of the following occur:

9 (I) The importing distributor sells, transfers or assigns
10 any ownership interest to or merges with another importing
11 distributor.

12 (II) The current owner of the importing distributor engages
13 in a change in ownership, engages in the establishment of trusts
14 or other ownership interests, enters into buy-sell agreements,
15 or grants an option to purchase an ownership interest with or to
16 anyone other than a current owner of the importing distributor,
17 a surviving spouse or adult child of such a current owner, a
18 trust for the benefit of the spouse or children of such current
19 owner or any of them, or a partnership, corporation or other
20 business entity of which such current owner, spouse or adult
21 child, or any combination thereof, owns more than fifty per
22 centum without first obtaining the prior written consent of the
23 manufacturer: Provided, That such consent is not unreasonably
24 withheld or delayed by the manufacturer and the importing
25 distributor has complied with any reasonable requests for
26 information concerning such changes.

27 (G) The failure of any importing distributor to negotiate
28 any primary agreement in good faith and to accept any material
29 and commercially reasonable term being offered to the importing
30 distributor which is substantially similar to terms and

conditions offered by the manufacturer and accepted by other
importing distributors or distributors.

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

(3) Except for discontinuance of a brand [or], a valid termination for good cause or a valid termination without cause under subsection (d) (1) (iii), the purchaser of the assets of the manufacturer as defined in this act shall become obligated to all the territorial and brand designations of the agreement in effect on the date of purchase. Purchase of assets as defined for the purposes of this act shall include, but not be limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

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

1 licensed premises of the importing distributor or distributor
2 are located is hereby vested with jurisdiction and power to
3 enjoin the modification, rescission, cancellation or termination
4 of a franchise or agreement between a manufacturer and an
5 importing distributor or distributor, or other violation of this
6 section or of section 492(18), (19) or (20), at the instance of
7 such importing distributor or distributor who is or might be
8 adversely affected by such modification, rescission,
9 cancellation or termination, and in granting an injunction the
10 court shall provide that no manufacturer shall supply the
11 customers or territory of the importing distributor or
12 distributor by servicing the territory or customers through
13 other importing distributors or distributors or any other means
14 while the injunction is in effect: Provided, however, That any
15 injunction issued under this subsection shall require the
16 posting of sufficient bond against damages arising from an
17 injunction improvidently granted and a showing [that the danger
18 of irrevocable loss or damage is immediate] of irreparable harm
19 as set forth under subsection (d)(1)(iii) and that during the
20 pendency of such injunction the importing distributor or
21 distributor shall continue to service the accounts of the
22 manufacturer in good faith.

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

1 effective date of this act, and which status is continuing when
2 this act becomes effective.]

3 * * *

4 (f) (1) Any malt or brewed beverage [produced outside this
5 Commonwealth] that is repackaged by a bailee for hire or
6 importing distributor on behalf of [an out of State] a
7 manufacturer of malt or brewed beverages must be returned to the
8 [out of State] manufacturer of malt or brewed beverages and come
9 to rest [out of State] at the manufacturing facility before it
10 may [reenter] be sold in this Commonwealth. Such repackaged malt
11 or brewed beverages must be distributed through the three-tier
12 system, unless otherwise provided under subsection (a.3) or (b).
13 [Any malt or brewed beverage that is repackaged by a bailee for
14 hire or importing distributor on behalf of an in State
15 manufacturer must be returned to the in State manufacturer and
16 come to rest at the in State manufacturer's licensed facility.]

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

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

22 Section 431.1. Malt and Brewed Beverages Alternating
23 Brewers' Licenses.--(a) The board shall be authorized to issue
24 an alternating brewer's license to qualified entities. In order
25 to qualify for the alternating brewer's license, the applicant
26 must demonstrate that it holds a Federal brewer's notice
27 registration issued for a premises within this Commonwealth and
28 meet all the qualifications imposed on the holder of a malt and
29 brewed beverage manufacturer's license.

30 (b) The holder of an alternating brewer's license shall have

1 all the rights and be subject to the same conditions and
2 qualifications as those imposed on holders of a malt or brewed
3 beverage manufacturer's license except as set forth in this
4 section.

5 (c) The holder of an alternating brewer's license is not
6 required to maintain separate manufacturing premises; rather,
7 the alternating brewer's license shall be valid at premises that
8 are licensed by another entity under a Pennsylvania
9 manufacturer's license. The holder of an alternating brewer's
10 license shall not be entitled to the limited tax credit
11 available under section 2010 of the act of March 4, 1971 (P.L.6,
12 No.2), known as the "Tax Reform Code of 1971."

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

21 (e) The application, renewal and filing fees for a malt and
22 brewed beverages alternating brewer's license shall be as
23 prescribed in section 614-A(10) of the act of April 9, 1929
24 (P.L.177, No.175), known as "The Administrative Code of 1929."

25 Section 4. Section 441(g) of the act, added December 20,
26 1996 (P.L.1513, No.196), is amended to read:

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

29 (g) All malt or brewed beverages purchased by an importing
30 distributor from a [Pennsylvania] manufacturer of malt or brewed

1 beverages [or from any person located outside this Commonwealth]
2 for resale shall be invoiced to the importing distributor, shall
3 come physically into the possession of such importing
4 distributor and shall be unloaded into and distributed from the
5 licensed premises of such importing distributor. The board may
6 act to further define and control the storage and distribution
7 of malt or brewed beverages in conformity with this section and
8 this act.

9 * * *

10 Section 5. Section 446(a) of the act, amended December 22,
11 2011 (P.L.530, No.113), is amended to read:

12 Section 446. Breweries.--(a) Holders of a brewery license
13 may:

14 (1) Sell malt or brewed beverages produced and owned by the
15 brewery under such conditions and regulations as the board may
16 enforce, to individuals for consumption on the licensed premises
17 in any container or package of any volume and to hotel,
18 restaurant, club and public service liquor licensees without the
19 necessity of obtaining any other license.

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

30 (3) Use brewery storage and distribution facilities for the

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

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

28 * * *

29 Section 6. Section 492(19) and (20) of the act, added June
30 22, 1980 (P.L.253, No.73), are amended to read:

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

It shall be unlawful--

* * *

(19) Modifying or Terminating Distributing Rights Agreement.

For any manufacturer or any officer, agent or representative of
any manufacturer to modify, cancel, terminate, rescind or not
renew[, without good cause,] any distributing rights agreement
without complying with section 431(d), and in no event shall any
modification, cancellation, termination, rescission or
nonrenewal of any distributing rights agreement become effective
for at least ninety (90) days after written notice of such
modification, cancellation, termination, rescission or intention
not to renew has been served on the affected party and board by
certified mail, return receipt requested, except by written
consent of the parties to the agreement. The notice shall state
all the reasons for the intended modification, termination,
cancellation, rescission or nonrenewal. The distributor or
importing distributor holding such agreement shall have ninety
(90) days in which to rectify any claimed deficiency, or
challenge the alleged cause.

If the deficiency shall be rectified within ninety (90) days
of notice, then the proposed modification, termination,
cancellation, rescission or nonrenewal shall be null and void
and without legal effect.

If the notice states as one of the reasons for the intended
modification, cancellation, termination, rescission or renewal
that the importing distributor or distributor's equipment or
warehouse requires major changes or additions, then if the
distributor or importing distributor shall have taken some

1 positive action to comply with the required changes or
2 additions, the distributor or importing distributor shall have
3 deemed to have complied with the deficiency as set forth in the
4 notice. The notice provisions of this section shall not apply if
5 the reason for termination, cancellation or nonrenewal is
6 insolvency, assignment for the benefit of creditors, bankruptcy,
7 liquidation, fraudulent conduct as set forth under section
8 431(d)(1)(iv)(D) in its dealings with the manufacturer,
9 revocation or suspension for more than a thirty (30) day period
10 of the importing distributor or distributor license.

11 (20) Interference with Transfer of License, Business or
12 Franchise. [(i)] For any manufacturer to:

13 (i) interfere with or prevent any distributor or importing
14 distributor from selling [or], transferring, or assigning his
15 license, business [or franchise, whether before or after notice
16 of modification, cancellation, termination, rescission or
17 nonrenewal has been given, provided the proposed purchaser of
18 the business of the distributor or importing distributor meets
19 the material qualifications and standards required of the
20 manufacturers other distributors or importing distributors; (ii)
21 if the proposed transfer of the distributor or importing
22 distributor's business is to a surviving spouse or adult child,
23 the manufacturer shall not, for any reason, interfere with, or
24 prevent, the transfer of the distributor or importing
25 distributor's license, business or franchise. Any subsequent
26 transfer by surviving spouse or adult child shall thereafter be
27 subject to the provisions of subclause (i) above.], franchise or
28 distributing rights to any current owner of the importing
29 distributor or distributor, any surviving spouse or adult child
30 of such current owner of the importing distributor or

1 distributor, a spouse or adult child of such current owner, a
2 trust for the benefit of a spouse or the children of such
3 current owner or any of them, or a partnership, corporation or
4 other business entity of which such current owner, spouse or
5 adult child, or any combination thereof, owns more than fifty
6 percent (50%); or

7 (ii) unreasonably withhold or delay its written consent to
8 any other sale, transfer or assignment of an importing
9 distributor or distributor's license, business franchise or
10 distributing rights.

11 * * *

12 Section 7. This act shall take effect as follows:

13 (1) The amendment of section 431(b) of the act shall
14 take effect in 150 days.

15 (2) This section shall take effect immediately.

16 (3) The remainder of this act shall take effect in 60
17 days.