

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 637 Session of 2015

INTRODUCED BY RAFFERTY, VANCE AND BOSCOLA, MARCH 13, 2015

REFERRED TO LAW AND JUSTICE, MARCH 13, 2015

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," in  
 17 preliminary provisions, further providing for definitions;  
 18 and, in licenses and regulations, liquor, alcohol and malt  
 19 and brewed beverages, further providing for malt and brewed  
 20 beverages manufacturers', distributors' and importing  
 21 distributors' licenses, for malt and brewed beverages  
 22 alternating brewers' licenses, for distributors' and  
 23 importing distributors' restrictions on sales, storage, etc.,  
 24 for breweries and for unlawful acts relative to malt or  
 25 brewed beverages and licensees.

26 This act shall be construed as an enactment of the General  
 27 Assembly's support for the 3-tier system for alcoholic beverages  
 28 production, subject to certain rights of a manufacturer,  
 29 distribution and sale that, through uniform Statewide  
 30 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

1 the courts of this Commonwealth for purposes of enforcement of  
2 this section and any related laws, rules or regulations. The  
3 manufacturer shall also be subject to citation by the  
4 enforcement bureau under section 471 and nonrenewal under  
5 section 470. The Department of Revenue may promulgate  
6 regulations requiring the filing of periodic reports by a  
7 manufacturer subject to the provisions of this subsection to  
8 ensure compliance with the provisions of this section.

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

1 conditions of the business relationship between the manufacturer  
2 and the importing distributor, including, but not limited to:  
3 (A) Termination of the relationship, with or without good  
4 cause.  
5 (B) The duties and responsibilities of each party.  
6 (C) Changes in ownership.  
7 (ii) In the event an importing distributor's license is  
8 suspended for more than five days, a manufacturer whose products  
9 are distributed by such importing distributor may self-  
10 distribute such products directly to the holders of any license  
11 in the designated geographic territory granted to the importing  
12 distributor by the manufacturer during the time period of the  
13 suspension without regard to the limitations set forth under  
14 subsection (a.3).  
15 (iii) The following shall apply:  
16 (A) Upon thirty days' written notice, a manufacturer may  
17 modify, cancel, terminate or rescind, in whole or in part, an  
18 agreement pertaining to the distribution of the manufacturer's  
19 brands with an existing importing distributor without good cause  
20 at any time as long as the manufacturer pays to the importing  
21 distributor the fair market value of the importing distributor's  
22 business with respect to the modified, canceled, terminated or  
23 rescinded brand or brands: Provided, That such modification,  
24 cancellation, termination or rescission shall not be permitted,  
25 and shall be enjoined by a competent court of common pleas in  
26 this Commonwealth, where the volume of such brand or brands  
27 accounts for more than twenty per centum (20%) of the entire  
28 volume distributed by the importing distributor. In the event  
29 the manufacturer's modified, canceled, terminated or rescinded  
30 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

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

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

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

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



1 licensed premises of the importing distributor or distributor  
2 are located is hereby vested with jurisdiction and power to  
3 enjoin the modification, rescission, cancellation or termination  
4 of a franchise or agreement between a manufacturer and an  
5 importing distributor or distributor, 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:

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

3 It shall be unlawful--

4 \* \* \*

5 (19) Modifying or Terminating Distributing Rights Agreement.

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

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

26 If the notice states as one of the reasons for the intended  
27 modification, cancellation, termination, rescission or renewal  
28 that the importing distributor or distributor's equipment or  
29 warehouse requires major changes or additions, then if the  
30 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.