

No. 1996-49

## AN ACT

HB 1431

Amending the act of April 12, 1951 (P.L.90, No.21), entitled, as reenacted, "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option, and repealing existing laws," further providing for definitions, for sales by liquor licensees, for malt and brewed beverages manufacturers, for malt and brewed beverages retail licenses, for special occasion permits, for licenses for art museums, for performing arts facilities, for stadium and restaurant licenses in third class cities, for transfer of restaurant licenses to deteriorated areas, for stadium or arena permits, for sales by manufacturers of malt or brewed beverages and for distributors' and importing distributors' restrictions on sales; prohibiting interlocking business; further providing for breweries, for local option and for limited wineries; allowing distributors of malt or brewed beverages to sell on credit; and making a repeal.

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

Section 1. The definitions of "distributor" and "importing distributor" in section 102 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, reenacted and amended June 29, 1987 (P.L.32, No.14), are amended and the section is amended by adding a definition to read:

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

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***"Case" shall mean a package prepared by the manufacturer for sale or distribution of twelve or more original containers totaling two hundred eighty-eight or more fluid ounces of malt or brewed beverages excepting those packages containing twenty-four or more original containers each holding seven fluid ounces or more.***

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"Distributor" shall mean any person licensed by the board to engage in the purchase only from Pennsylvania manufacturers and from importing distributors and the resale of malt or brewed beverages, except to importing distributors and distributors, in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for

consumption on the premises where sold, and in quantities of not less than a case **[of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except]** *or* original containers containing one hundred twenty-eight ounces or more which may be sold separately.

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“Importing distributor” shall mean any person licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth and from persons licensed as manufacturers of malt or brewed beverages and importing distributors under this act, and the resale of malt or brewed beverages in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case **[of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except]** *or* original containers containing one hundred twenty-eight ounces or more which may be sold separately.

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Section 2. Section 406(a)(3) and (5) of the act, amended April 29, 1994 (P.L.212, No.30), are amended to read:

Section 406. Sales by Liquor Licensees; Restrictions.—(a) \* \* \*

(3) Hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees whose sales of food and nonalcoholic beverages are equal to **[forty]** *thirty* per centum or more of the combined gross sales of both food and alcoholic beverages may sell liquor and malt or brewed beverages on Sunday between the hours of eleven o'clock antemeridian and two o'clock antemeridian Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as “The Administrative Code of 1929.”

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**[(5) Any hotel, restaurant, club or public service liquor licensee may, by giving notice to the board, advance by one hour the hours herein prescribed as those during which liquor and malt or brewed beverages may be sold during such part of the year when daylight saving time is being observed generally in the municipality in which the place of business of such licensee is located. Any licensee who elects to operate his place of business in accordance with daylight saving time shall post a conspicuous notice in his place of business that he is operating in accordance with daylight saving time.]**

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Section 3. Section 408.4 of the act is amended by adding a subsection to read:

Section 408.4. Special Occasion Permits.—\* \* \*

*(e.1) Notwithstanding any provisions of law to the contrary, a permittee who is a nonprofit organization as defined under section 501(c)(4) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(4)) who is conducting a regatta may sell for consumption liquor and malt or brewed beverages in or on the grounds of a State park located within a city of the second class for a period not to exceed ten consecutive days in calendar year 1996.*

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Section 4. Section 408.5 of the act, amended April 29, 1994 (P.L.212, No.30), is amended to read:

Section 408.5. Licenses for City-owned Art Museums, Cities First Class; Art Museums Maintained by Certain Non-profit Corporations in Cities of the Second Class; and Non-profit Science and Technology Museums in Cities of the First Class and in Cities of the Second Class.—(a) The board is authorized to issue a license in any city of the first class for the retail sale of liquor and malt or brewed beverages by the glass, open bottles or other container, and in any mixture, for consumption in any *State-chartered or* city-owned art museum, in any art museum maintained by a non-profit corporation in cities of the second class or any non-profit science and technology museum in cities of the first class or in cities of the second class. For the purpose of this section “non-profit corporation” shall mean a corporation organized under the non-profit corporation laws for the benefit of the public and not for the mutual benefit of its members, and which maintains an art museum or a science and technology museum having a floor area of not less than one hundred thousand square feet in one building.

(b) The application for a license may be filed by *the State-chartered art museum*, the city, the non-profit corporation or lessee. The application may also be filed by a concessionaire selected and certified by *the State-chartered art museum*, the city or the non-profit corporation. The application shall conform with all requirements for restaurant liquor licenses and applications except as may otherwise be provided herein. Applicant shall submit such other information as the board may require. The application shall be in writing on forms prescribed by the board and shall be signed and submitted to the board by the applicant. A filing fee as prescribed in section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as “The Administrative Code of 1929,” shall accompany the license application.

(c) Upon receipt of the application in proper form with the application fee and upon being satisfied that the applicant is of good repute and financially responsible and that the proposed place of business is proper, the board shall issue a license to the applicant.

(d) The license shall be issued for the same period of time as provided for restaurant licensees and shall be renewed as provided in section 402. The license shall terminate upon revocation by the board or upon termination of the lease or upon termination of the contract between the concessionaire and

*the State-chartered art museum*, the city or the non-profit corporation and shall not be validated if the annual fee is not timely paid.

(g) Sales by the holder of an art museum license or science and technology license may be made except to those persons prohibited by this act on premises used for art museum or science and technology purposes, but such sales may not be made beyond the hours expressed in this act for the sale of liquor by restaurant licenses. However, sales of liquor or malt or brewed beverages may be made by an art museum or science and technology licensee at banquets at which more than five hundred persons are scheduled to attend and at any other function which is directly related to art museum or science and technology purposes.

(h) Whenever a lease or a concession contract is terminated prior to the expiration date provided in the lease or contract between *the State-chartered art museum*, the city or the non-profit corporation and the tenant or concessionaire, *the State-chartered art museum*, the city or the non-profit corporation may select and certify to the board a different licensee or concessionaire who may then apply to the board for a new license. If the applicant meets the requirements of the board as herein provided a new license shall thereupon be issued.

(i) If the board shall revoke any art museum license or science and technology license, the board shall issue a new license to any qualified applicant without regard to the prohibition in section 471 against the grant of a license at the same premises for a period of at least one year.

(i.1) Any renewal of a license presently held by a city-owned art museum in a city of the first class shall be accomplished by the purchase of a license from an existing licensee.

(i.2) An art museum maintained by a non-profit corporation or corporations in a city of the second class which obtains approval of its application for a license from the board shall purchase a license from an existing licensee.

*(i.3) A license issued to a State-chartered art museum shall not be subject to the quota restrictions of section 461 nor to the provisions of section 404.*

(j) The provisions of this act shall supersede or exempt any provision of the Liquor Code which would prevent the issuance of a license for the retail sale of liquor and malt or brewed beverages upon any premises owned by *a State-chartered art museum*, the city of the first class or by a non-profit corporation in a city of the second class used for art museum purposes.

*(k) For purposes of this section, "State-chartered art museum" shall mean an art museum established under the authority of the act of April 6, 1791 (3 Sm.L.20, No.1536), entitled "An act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law."*

Section 5. Section 408.6 heading and (a) of the act, amended May 31, 1990 (P.L.224, No.48), is amended to read:

Section 408.6. Performing Arts Facilities in *Second Class A Cities*, Third Class Cities and Townships of the Second Class Located in Fourth Class Counties.—(a) The board is authorized to issue a restaurant liquor license to a nonprofit corporation or to a concessionaire selected by such nonprofit corporation in any city of the *second class A or any city of the third class* for the retail sale of liquor and malt or brewed beverages by the glass, open bottles or other container or in any mixture for consumption on any city-owned premises utilized as a nonprofit performing arts facility or any other premises utilized as a nonprofit performing arts facility where there is an available seating capacity within the premises of six hundred fifty or more: Provided, however, That no sale or consumption of such beverages shall take place on any portions of such premises other than service areas approved by the board.

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Section 6. Section 408.9 of the act is amended to read:

Section 408.9. Stadium and Restaurant Licenses in Third Class Cities.—The board is authorized to issue one restaurant license in any city of the third class for the retail sale of liquor and malt or brewed beverages by the glass, open bottles or other containers, and in any mixture, for consumption in any restaurant which is located not more than one thousand feet from a stadium which has a seating capacity of **[five thousand] four thousand five hundred** persons, situate on the same lot or parcel of land not less than **[twenty-five acres] four acres** in size with no intervening public thoroughfare between the restaurant and the stadium.

Section 7. Section 408.13 of the act, added July 6, 1995 (P.L.258, No.35), is amended to read:

Section 408.13. Transfer of Restaurant Licenses to Deteriorated Areas.—(a) The board is hereby authorized to approve the transfer of restaurant liquor licenses from one municipality to another in the same county regardless of the quota limitations provided for in section 461, if sales of liquor and malt or brewed beverages are legal in such other municipality and if the place proposed to be licensed in the other municipality is located within a deteriorated area whose boundaries have been affixed pursuant to the criteria set forth in the act of December 1, 1977 (P.L.237, No.76), known as the “Local Economic Revitalization Tax Assistance Act,” and *as of the date of restaurant liquor license transfer is designated as a distressed community by the Department of Commerce pursuant to criteria set forth in the act of July 2, 1984 (P.L.520, No.105), known as the “Business Infrastructure Development Act,”* and in which the cost of new construction **[is eligible] must receive** for real property **at least five percentum** tax exemption by more than one local taxing authority **for a period of at least three years from the completion of the new construction** and whose total area comprises at least fifty acres. Any such area in this section shall be referred to as a “LERTA zone.” For purposes of this section, the board shall not, however, approve such a transfer if the license to be transferred is located in a municipality in

which the number of licenses issued in the municipality does not exceed the quota limitations provided in section 461 or if such municipality has been designated as a resort area by either the board or any court. In addition, the board shall not approve the transfer of any license, if the license was issued under the resort area exception provided in section 461.

(b) For the purposes of this section, a local taxing authority shall mean a county, city, borough, incorporated town, township, institution district or school district having authority to levy real property taxes.

(c) For the purposes of this section, a municipal governing body shall mean a city, borough, incorporated town or township.

(d) Licenses approved for transfer under this section shall be limited to one licensed premises per ~~[fifty thousand]~~ *one hundred thousand* square feet of completed new construction in the LERTA zone which is climate-controlled and ~~[is eligible]~~ *must receive at least five percentum* for local property tax exemption *by more than one taxing authority for a period of three years from the completion of construction*, except that in no instance shall more than ~~[six]~~ *four* restaurant liquor licenses be transferred to any single LERTA zone pursuant to this section. Licenses transferred pursuant to this section may be filed on a prior or final approval basis pursuant to section 403.

(e) Before an application for transfer may be filed with the board under subsection (a) of this section, the applicant for transfer must receive the approval of the municipal governing body which specified the boundaries of the LERTA zone wherein the place proposed to be licensed is located. Within thirty days of a request for approval of a transfer of a restaurant liquor license to a LERTA zone by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving the comments and recommendations of interested individuals residing within the LERTA zone concerning the applicant's intent to transfer a restaurant liquor license to the LERTA zone. The municipal governing body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request to transfer a restaurant liquor license to the LERTA zone. A decision by the municipal governing body to approve the request is ~~[not]~~ *appealable to the board*. A municipal governing body shall not approve any request to transfer a restaurant liquor license to a LERTA zone which does not meet the requirements relating to property tax exemption by more than one local taxing authority, total acreage of the LERTA zone, and the square footage of new construction ~~[eligible for]~~ *receiving* tax exemption contained in subsections (a) and (d) of this section.

(f) Every applicant for transfer of a restaurant liquor license under this section shall file a written application with the board and shall conform with the requirements of section 102. Applications for transfer under this section must meet all the requirements of restaurant liquor license transfers not

inconsistent with the provisions of this section but shall not be subject to the two hundred-foot restriction set forth in section 404.

(g) An application for transfer filed under this section shall contain a copy of the ordinance or resolution of the municipal governing body approving the transfer of a restaurant liquor license to a LERTA zone. The applicant shall submit such other information as the board may by regulation require.

(h) Upon receipt of an application in proper form and the filing fee and upon being satisfied that the requirements of this section have been met, the board shall approve the transfer of the license.

(i) After transfer of the license into a LERTA zone under this section, the license may not be transferred to a location outside of the LERTA zone or outside of the boundaries by which the LERTA zone was originally established, except as provided for in section 468 and the selling price of the license, if any, shall remain fixed at the price at which the license was transferred to the LERTA zone.

*(j) For the purposes of this section, the term "new construction" shall mean a construction project of additional square footage where local ordinance requires the application and approval of a building permit and where the actual construction requires the existence of a foundation or an additional foundation. The term shall not include the internal renovation or cosmetic change to an existing structure.*

Section 8. Sections 431(a) and (b) and 432(f) of the act, amended April 29, 1994 (P.L.212, No.30), are amended to read:

Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.—(a) The board shall issue to any person a resident of this Commonwealth of good repute who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a manufacturer's license to produce and manufacture malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages at or from one or more places of manufacture or storage, only in original containers, in quantities of not less than a case [of **twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except**] ~~or~~ original containers containing one hundred twenty-eight ounces or more which may be sold separately anywhere within the Commonwealth. Licenses for places of storage shall be limited to those maintained by manufacturers on July eighteenth, one thousand nine hundred thirty-five, and the board shall issue no licenses for places of storage in addition to those maintained on July eighteenth, one thousand nine hundred thirty-five. The application for such license shall be in such form and contain such information as the board shall require. All such licenses shall be granted for a license period to be determined by the board. Every manufacturer shall keep at his or its principal place of business, within the Commonwealth daily permanent records which shall show, (1) the quantities of raw materials received and used in the manufacture of malt or brewed beverages and the

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

(b) The board shall issue to any reputable person who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, 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 **[twenty-four containers, each container holding seven fluid ounces or more, or twelve containers, each container holding twenty-four fluid ounces or more, except] a case or** original containers containing one hundred twenty-eight ounces or more which may be sold separately **[and such containers to be the original containers]** 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 feet of any other premises which is licensed by the board: And provided further, That the board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed. The board shall refuse any application for a new license or the transfer of any license to a location where the sale of liquid fuels or oil is conducted. The board shall require notice to be posted on the property or premises upon which the licensee or proposed licensee will engage in sales of malt or brewed beverages. This notice shall be similar to the notice required of hotel, restaurant and club liquor licensees.

Except as hereinafter provided, such license shall authorize the holder thereof to sell or deliver malt or brewed beverages in quantities above specified anywhere within the Commonwealth of Pennsylvania, which, in the case of distributors, have been purchased only from persons licensed under this act as manufacturers or importing distributors, and in the case of importing distributors, have been purchased from manufacturers or persons outside this Commonwealth engaged in the legal sale of malt or brewed beverages or from manufacturers or importing distributors licensed under this article.

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

When a Pennsylvania manufacturer of malt or brewed beverages licensed under this article names or constitutes a distributor or importing distributor as the primary or original supplier of his product, he shall also designate the specific geographical area for which the said distributor or importing distributor is given distributing rights, and such distributor or importing distributor shall not sell or deliver the products of such manufacturer to any person issued a license under the provisions of this act whose licensed

premises are not located within the geographical area for which distributing rights have been given to the distributor and importing distributor by the said manufacturer: Provided, That the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer. Nothing herein contained shall be construed to prevent any manufacturer from authorizing the importing distributor holding the distributing rights for a designated geographical area from selling the products of such manufacturer to another importing distributor also holding distributing rights from the same manufacturer for another geographical area, providing such authority be contained in writing and a copy thereof be given to each of the importing distributors so affected.

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Section 432. Malt and Brewed Beverages Retail Licenses.—\* \* \*

(f) Hotel, eating places, or municipal golf course retail dispenser licensees whose sales of food and nonalcoholic beverages are equal to [**forty per centum (40%)**] *thirty per centum (30%)* or more of the combined gross sales of both food and malt or brewed beverages may sell malt or brewed beverages between the hours of eleven o'clock antemeridian on Sunday and two o'clock antemeridian on Monday upon purchase of a special permit from the board at an annual fee as prescribed in section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," which shall be in addition to any other license fees. Provided further, the holder of such special permit may sell malt or brewed beverages after seven o'clock antemeridian and until two o'clock antemeridian of the following day, on any day on which a general, municipal, special or primary election is being held.

Section 9. Section 433.1(a) of the act, amended May 4, 1989 (P.L.19, No.5), is amended to read:

Section 433.1. Stadium or Arena Permits.—(a) The board is hereby authorized to issue, in cities of the first, second and third class, in counties of the third class and in school districts in counties of the third class, special permits allowing the holders thereof to make retail sales of malt or brewed beverages in shatterproof containers at all events on premises principally utilized for competition of professional and amateur athletes and other types of entertainment having an available seating capacity of; (1) twelve thousand or more in cities of the first and second class; (2) four thousand or more and owned by the *county or the* city in cities of the third class; (3) four thousand two hundred or more and owned by counties of the third class; and (4) two thousand five hundred or more in school districts in counties of the third class: Provided, however, That in cities of the second class this section shall be applicable only to premises owned, leased or operated by any authority

created under the act of July 29, 1953 (P.L.1034, No.270), known as the "Public Auditorium Authorities Law." Such sales may be made only to adults and only on days when the premises are so used and only during the period from one hour before the start of and ending one-half hour after the close of the event on the premises: Provided, however, That in school districts in counties of the third class sales may be made only during professional athletic competition.

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Section 10. Section 440 of the act is amended to read:

Section 440. Sales by Manufacturers of Malt or Brewed Beverages; Minimum Quantities.—No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold, nor sell or deliver any such malt or brewed beverages in other than original containers approved as to capacity by the board, nor in quantities of less than a case **[of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except]** *or* original containers containing one hundred twenty-eight ounces or more which may be sold separately; nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.

Section 11. Section 441(a) and (b) of the act are amended and the section is amended by adding a subsection to read:

Section 441. Distributors' and Importing Distributors' Restrictions on Sales, Storage, Etc.—(a) No distributor or importing distributor shall purchase, receive or resell any malt or brewed beverages except:

(1) in the original containers as prepared for the market by the manufacturer at the place of manufacture[.]; *or*

(2) *in the case of identical containers repackaged in the manner described by subsection (f).*

(b) No distributor or importing distributor shall sell any malt or brewed beverages in quantities of less than a case **[of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except]** *or* original containers containing one hundred twenty-eight ounces or more which may be sold separately: Provided, That no malt or brewed beverages sold or delivered shall be consumed upon the premises of the distributor or importing distributor, or in any place provided for such purpose by such distributor or importing distributor.

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*(f)(1) To salvage one or more salable cases from one or more damaged cases, cartons or packages of malt or brewed beverages, a distributor or importing distributor may repackage consequent to inadvertent damage and sell a case, carton or package of identical units of malt or brewed beverages.*

(2) *Repackaging is permissible only to the extent made necessary by inadvertent damage. Repackaging not consequent to damage is prohibited.*

(3) *The term "identical units" as used in this subsection means undamaged bottles or cans of identical brand, package and volume.*

Section 12. Section 443 of the act is amended to read:

Section 443. Interlocking Business Prohibited.—(a) No manufacturer of malt or brewed beverages and no officer or director of any such manufacturer shall at the same time be a distributor, importing distributor or retail dispenser, or an officer, director or stockholder or creditor of any distributor, importing distributor or retail dispenser, nor, except as hereinafter provided, be the owner, proprietor or lessor of any place for which a license has been issued for any importing distributor, distributor or retail dispenser, or for which a hotel, restaurant or club liquor license has been issued[.]: *Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.*

(b) No distributor or importing distributor and no officer or director of any distributor or importing distributor shall at the same time be a manufacturer, a retail dispenser or a liquor licensee, or be an officer, director, stockholder or creditor of a manufacturer, a retail dispenser or a liquor licensee, or, directly or indirectly, own any stock of, or have any financial interest in, or be the owner, proprietor or lessor of, any place covered by any other malt or brewed beverage or liquor license.

(c) No licensee licensed under this subdivision (B) of Article IV and no officer or director of such licensee shall, directly or indirectly, own any stock of, or have any financial interest in, any other class of business licensed under this subdivision[.]: *Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.*

(d) Excepting as hereinafter provided, no malt or brewed beverage manufacturer, importing distributor or distributor shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or in any mortgage against the same, for which a liquor or retail

dispenser's license is granted; nor shall any such manufacturer, importing distributor or distributor, either directly or indirectly, lend any moneys, credit or equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any liquor licensee or retail dispenser, in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business operated under a liquor or retail dispenser's license, excepting only the usual and customary credits allowed for returning original containers in which malt or brewed beverages were packaged for market by the manufacturer at the place of manufacture[.]: ***Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.***

(e) Excepting as hereinafter provided, no manufacturer of malt or brewed beverages shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or any mortgage lien against the same, for which a distributor's or importing distributor's license is granted; nor shall any such manufacturer, either directly or indirectly, lend any moneys, credit, or their equivalent to, or guarantee the payment of any bond, mortgage, note or other obligation of, any distributor or importing distributor, in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business where malt or brewed beverages are licensed for sale by a distributor or importing distributor, excepting only the usual credits allowed for the return of original containers in which malt or brewed beverages were originally packaged for the market by the manufacturer at the place of manufacture[.]: ***Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.***

(f) No distributor, importing distributor or retail dispenser shall in anywise receive, either directly or indirectly, any credit, loan, moneys or the equivalent thereof from any other licensee, or from any officer, director or firm member of any other licensee, or from or through a subsidiary or affiliate of another licensee, or from any firm, association or corporation,

except banking institutions, in which another licensee or any officer, director or firm member of another licensee has a substantial interest or exercises a control of its business policy, for equipping, fitting out, payment of license fee, maintaining and conducting, either in whole or in part, an establishment or business operated under a distributor's, importing distributor's or retail dispenser's license, excepting only the usual and customary credits allowed for the return of original containers in which malt or brewed beverages were packaged for the market by the manufacturer at the place of manufacture[.]: *Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.*

(g) The purpose of this section is to require a separation of the financial and business interests between the various classes of business regulated by subdivision (B) of this article, and no person or corporation shall, by any device whatsoever, directly or indirectly, evade the provisions of this section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest by a malt or brewed beverage manufacturer of any place occupied by a distributor, importing distributor or retail dispenser after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to the eighteenth day of July, one thousand nine hundred thirty-five[.]: *Provided, however, That a holder of a manufacturer's license under section 431(a) who is eligible to operate a brewery pub under section 446(2) or a limited winery as provided for under section 505.2 may also hold and operate under a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license on the manufacturer's or limited winery's licensed premises. The hotel liquor license or restaurant liquor license or the malt and brewed beverages retail license shall be acquired by the manufacturer or limited winery subject to section 461 and shall satisfy all requirements for each respective license.*

The term "manufacturer" as used in this section shall include manufacturers of malt or brewed beverages as defined in this act and any person manufacturing any malt or brewed beverages outside of this Commonwealth.

Section 13. Section 446 of the act is amended by adding a clause to read:

Section 446. Breweries.—Holders of a brewery license may:

\* \* \*

(4) *Apply for and hold a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license to sell for consumption at the*

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

Section 14. Section 472 of the act, amended October 5, 1994 (P.L.537, No.80), is amended to read:

Section 472. Local Option.—(a) In any municipality or any part of a municipality where such municipality is split so that each part thereof is separated by another municipality, an election may be held, subject to subsection (c), on the date of the primary election immediately preceding any municipal election, but not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to hotels, restaurants and clubs, not oftener than once in four years, to determine the will of the electors with respect to the granting of liquor licenses to privately-owned private golf courses *or to privately-owned public golf courses*, not oftener than once in four years, to determine the will of the electors with respect to the granting of licenses to retail dispensers of malt and brewed beverages, not oftener than once in four years, to determine the will of the electors with respect to granting of licenses to wholesale distributors and importing distributors, not more than once in two years, to determine the will of the electors with respect to the granting of club liquor licenses or club retail dispenser licenses to incorporated units of national veterans' organizations, or not more than once in four years, to determine the will of the electors with respect to the establishment, operation and maintenance by the board of Pennsylvania liquor stores, within the limits of such municipality or part of a split municipality, under the provisions of this act: Provided, however, Where an election shall have been held at the primary preceding a municipal election in any year, another election may be held under the provisions of this act at the primary occurring the fourth year after such prior election: And provided further, That an election on the question of establishing and operating a State liquor store shall be initiated only in those municipalities, or that part of a split municipality that shall have voted against the granting of liquor licenses; and that an election on the question of granting wholesale distributor and importing distributor licenses shall be initiated only in those municipalities or parts of split municipalities that shall have at a previous election voted against the granting of dispenser's licenses.

Whenever electors equal to at least twenty-five per centum of the highest vote cast for any office in the municipality or part of a split municipality at the last preceding general election shall file a petition with the county board of elections of the county for a referendum on the question of granting any of said classes of licenses or the establishment of Pennsylvania liquor stores, the said county board of elections shall cause a question to be placed on the ballots or on the voting machine board and submitted at the primary immediately preceding the municipal election. Separate petitions must be filed for each question to be voted on. Said proceedings shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions, insofar as such provisions are applicable.

When the question is in respect to the granting of liquor licenses, it shall be in the following form:

Do you favor the granting of liquor licenses for the sale of liquor in..... Yes of.....? No

When the question is in respect to the granting of liquor licenses, for privately-owned private golf courses, it shall be in the following form:

Do you favor the granting of liquor licenses for privately-owned private golf courses for the sale of liquor in.....by..... Yes of.....? No

*When the question is in respect to the granting of liquor licenses, for privately-owned public golf courses, it shall be in the following form:*

*Do you favor the granting of liquor licenses for privately-owned public golf courses for the sale of liquor in.....by..... Yes of.....? No*

When the question is in respect to the granting of licenses to retail dispensers of malt and brewed beverages, it shall be in the following form:

Do you favor the granting of malt and brewed beverage retail dispenser licenses for consumption on premises where sold in the..... Yes of.....? No

When the question is in respect to the granting of licenses to wholesale distributors of malt or brewed beverages and importing distributors, it shall be in the following form:

Do you favor the granting of malt and brewed beverage wholesale distributor's and importing distributor's licenses not for consumption on premises where sold in the..... Yes of.....? No



When the question is in respect to the granting of club liquor licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club liquor licenses to incorporated units of national veterans' organizations in the..... Yes of.....? No

When the question is in respect to the granting of club retail dispenser licenses to incorporated units of national veterans' organizations, it shall be in the following form:

Do you favor the granting of club retail dispenser licenses to incorporated units of national veterans' organizations in the..... Yes of.....? No

When the question is in respect to the establishment, operation and maintenance of Pennsylvania liquor stores it shall be in the following form:

Do you favor the establishment, operation and maintenance of Pennsylvania liquor stores in the..... Yes of.....? No

In case of a tie vote, the status quo shall obtain. If a majority of the voting electors on any such question vote "yes," then liquor licenses shall be granted by the board to hotels, restaurants and clubs, or liquor licenses shall be granted by the board to privately-owned private golf courses or to privately-owned public golf courses, or malt and brewed beverage retail dispenser licenses or wholesale distributor's and importing distributor's license for the sale of malt or brewed beverages shall be granted by the board, or club liquor licenses or club retail dispenser licenses shall be granted by the board to incorporated units of national veterans' organizations, or the board may establish, operate and maintain Pennsylvania liquor stores, as the case may be, in such municipality or part of a split municipality, as provided by this act; but if a majority of the electors voting on any such question vote "no," then the board shall have no power to grant or to renew upon their expiration any licenses of the class so voted upon in such municipality or part of a split municipality; or if the negative vote is on the question in respect to the establishment, operation and maintenance of Pennsylvania liquor stores, the board shall not open and operate a Pennsylvania liquor store in such municipality or part of a split municipality, nor continue to operate a then existing Pennsylvania liquor store in the municipality or part of a split municipality for more than two years thereafter or after the expiration of the term of the lease on the premises occupied by such store, whichever period is less, unless and until at a later election a majority of the voting electors vote "yes" on such question.

(b) To be eligible for the local option under this section, the incorporated unit of a national veterans' organization must have been incorporated on or

before a date ten years prior to the filing of its application after authorization under local option. In each municipality, licenses approved under the local option for incorporated units of national veterans' organizations may not exceed four.

(c) For the first year that the local option is authorized for the incorporated units of national veterans' organizations, the local option election for the incorporated units of national veterans' organizations may be held at the primary election preceding any election.

Section 15. Section 493(2) and (20)(i) of the act, amended April 29, 1994 (P.L.212, No.30), are amended to read:

Section 493. Unlawful Acts Relative to Liquor, Malt and Brewed Beverages and Licensees.—The term "licensee," when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful—

\* \* \*

(2) Purchase or Sale of Liquor or Malt or Brewed Beverages on Credit. For any licensee, his agent, servant or employe, to sell or offer to sell or purchase or receive any liquor or malt or brewed beverages except for cash, excepting credit extended by a hotel or club to a bona fide guest or member, or by railroad or pullman companies in dining, club or buffet cars to passengers, for consumption while enroute, holding authorized credit cards issued by railroad or railroad credit bureaus or by hotel, restaurant and public service licensees, *importing distributors or distributors* to customers *not possessing a license under this article and* holding credit cards issued in accordance with regulations of the board or credit cards issued by banking institutions subject to State or Federal regulation: Provided further, That nothing herein contained shall be construed to prohibit the use of checks or drafts drawn on a bank, banking institution, trust company or similar depository, organized and existing under the laws of the United States of America or the laws of any state, territory or possession thereof, in payment for any liquor or malt or brewed beverages if the purchaser is the payor of the check or draft and the licensee is the payee. No right of action shall exist to collect any claim for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for original containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for such containers or as a deposit on containers when title is retained by the vendor, if such original containers have been returned to the licensee. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for liquor or malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the liquor or malt or brewed beverages so sold are actually transported and delivered to points outside of the Commonwealth: Provided, however, That

as to all transactions affecting malt or brewed beverages to be resold or consumed within this Commonwealth, every licensee shall pay and shall require cash deposits on all returnable original containers and all such cash deposits shall be refunded upon return of the original containers.

\* \* \*

(20) (i) Retail Liquor and Retail Malt or Brewed Beverages Licensee's Inside Advertisements. For any retail liquor or retail malt or brewed beverages licensee, to display or permit the display in the show window or doorways of his licensed premises, any placard or sign advertising the brands of liquor or malt or brewed beverages, if the total display area of any such placard or sign advertising the product or products exceeds ~~[three]~~ *six* hundred square inches. Nothing herein shall prohibit a licensee from displaying inside his licensed premises point of sale displays advertising brand names of products sold by him, other than a window or door display: Provided, That the total cost of all such point of sale advertising matter relating to any one brand shall not exceed the sum of ~~[seventy dollars (\$70)]~~ *one hundred forty dollars (\$140)* at any one time, and no single piece of advertising shall exceed a cost of ~~[thirty-five dollars (\$35).]~~ *seventy dollars (\$70)*. *The board is authorized to make annual adjustments to the cost limitations on point of display advertising to reflect any changes in such limitations by the United States Bureau of Alcohol, Tobacco and Firearms or its successors in accordance with 27 CFR 6.83 (relating to product displays) and 27 CFR 6.85 (relating to retailer advertising specialties)*. All such advertising material, including the window and door signs, may be furnished by a manufacturer, distributor or importing distributor. The restrictions on advertising set forth in subclause (ii) and in clauses (20.1) and (20.2) shall also apply to this subclause.

\* \* \*

Section 16. Section 505.2 of the act is amended by adding a clause to read:

Section 505.2. Limited Wineries.—In the interest of promoting tourism and recreational development in Pennsylvania, holders of a limited winery license may:

\* \* \*

(5) *Apply for and hold a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license to sell for consumption at the restaurant or limited winery on the licensed winery premises, liquor, wine and malt or brewed beverages regardless of the place of manufacture under the same conditions and regulations as any other hotel liquor license, restaurant liquor license or malt and brewed beverages retail license.*

Section 17. The amendment of section 408.13 of the act shall not apply to a LERTA zone municipality that has by the effective date of this act approved by resolution or ordinance the transfer of a liquor license into the LERTA zone.

Section 18. The provisions of 18 Pa.C.S. § 7506 are repealed insofar as they are inconsistent with this act.

Section 19. This act shall take effect immediately.

APPROVED—The 31st day of May, A.D. 1996.

THOMAS J. RIDGE