

No. 1996-196

AN ACT

HB 2257

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," providing for an investigative unit, for records of importing distributors and for fee surcharges; and providing for distributors' and importing distributors' restrictions on sales of malt or brewed beverages, for prices of malt or brewed beverages, for Sunday sales of alcoholic beverages and for distribution of malt and brewed beverages.

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

Section 1. Section 104(d) 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) and amended December 7, 1990 (P.L.622, No.160), is amended to read:

Section 104. Interpretation of Act.—* * *

(d) The provisions of this act are intended to create a system for distribution that shall include the fixing of prices for liquor and alcohol and controls placed on prices for malt and brewed beverages, and *each of* which shall be construed as integral to the preservation of the system, without which *system* the Commonwealth's control of the sale of liquor and alcohol and malt and brewed beverages *and the Commonwealth's promotion of its policy of temperance and responsible conduct with respect to alcoholic beverages* would not be possible.

* * *

Section 2. The act is amended by adding a section to read:

Section 216. Investigative Unit.—(a) The board shall establish an investigative unit that shall be responsible for implementing and monitoring compliance with the provisions of and regulations made under this act relating to malt or brewed beverages and the malt or brewed beverage industry.

(b) The investigative unit shall, among other things:

(1) handle notifications concerning price introductions and changes;

(2) *receive and make recommendations to the board concerning applications to rescind price discounts;*

(3) *provide assistance to the board concerning reports and investigations the board desires or is required to provide;*

(4) *handle applications for brand registration; and*

(5) *handle copies of franchise or territorial agreements submitted by importing distributors.*

(c) *Management of the unit shall be vested in a director, who shall be assisted by other personnel as the board deems necessary. The director shall report to the board secretary.*

Section 3. Section 431(d)(2) of the act is amended and the section is amended by adding a subsection to read:

Section 431. Malt and Brewed Beverages Manufacturers', Distributors' and Importing Distributors' Licenses.—* * *

(d) * * *

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

* * *

(e) *In addition to the fees under section 614-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the board shall assess a fee surcharge of ninety-five dollars (\$95.00) for a distributor's license and a fee surcharge of four hundred seventy dollars (\$470.00) for an importing distributor's license, and a fee surcharge of seventy-five dollars (\$75.00) for brand registration. Money collected under this subsection shall be placed in a restricted account in The State Stores Fund. The board may use the money in this account to implement section 216.*

Section 4. Section 441 of the act is amended by adding a subsection to read:

Section 441. Distributors' and Importing Distributors' Restrictions on Sales, Storage, Etc.—* * *

(g) *All malt or brewed beverages purchased by an importing distributor from a Pennsylvania manufacturer of malt or brewed beverages or from*

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

Section 5. Section 447 of the act, added December 7, 1990 (P.L.622, No.160), is amended to read:

Section 447. Price Changes of Malt and Brewed Beverages.—(a) (1) The purpose of this section is to [regulate the manner in which prices of malt or brewed beverages is changed by the manufacturers, importing distributors and other distributors and to provide] *effect and promote the intent of the General Assembly, expressed in section 104 of this act and in this section, by regulating the manner in which wholesale prices of malt or brewed beverages are changed by a manufacturer, importing distributor and distributor and by providing for the retention and the furnishing of records of price changes by such manufacturers, importing distributors and distributors. By forbidding manufacturers, importing distributors and distributors from providing short-term price wholesale discounts, it is the intent of the General Assembly to discourage increased consumption and irresponsible conduct resulting from impulse buying, price promotion or the natural elasticity of demand relative to price.*

(2) Any manufacturer, importing distributor or distributor [who] *which* reduces the price on any package of any brand of malt or brewed [beverages] *beverage* sold for resale within this Commonwealth may further reduce the price at any time, but any reduction shall continue in full force and effect for at least one hundred [eighty] *twenty* days from the date on which the last such reduced price becomes effective, except [for the meeting of competition as set forth in subsection (b). However, such reduced price may be increased during such one hundred eighty-day period to reflect any tax increase on malt or brewed beverages.] *that price may be increased earlier:*

(i) *to reflect any tax increase on malt or brewed beverages;*

(ii) *in the manner described in subsection (b) if the increase was effected to meet competition; or*

(iii) *with permission of the board granted in the manner described in subsection (c).*

(3) If [a manufacturer,] *an* importing distributor or distributor of malt or brewed beverages lowers the wholesale price on any package of any brand of malt or brewed beverages to one importing distributor or distributor or retail licensee within [this Commonwealth, the manufacturer,] *the geographic area for which he possesses distribution rights for that product, the* importing distributor or distributor shall lower the wholesale price on such package of such brand offered or sold to all other importing distributors

or distributors or retail licensees within [this Commonwealth] *the geographic area* by a like amount. Any importing distributor or distributor who lowers the wholesale price on any package of any brand of malt or brewed beverages shall file a notice of the lowered price with the Commonwealth no later than seven days of such change and retain a record of the lowered price for at least two years from the date of filing. If such [manufacturer,] importing distributor or distributor, having lowered the wholesale price on a package of a brand pursuant to this section, subsequently raises the wholesale price on such package of such brand to one importing distributor or distributor or retail licensee within [this Commonwealth, such manufacturer,] *the geographic area for which he possesses distribution rights for that product, the* importing distributor or distributor shall raise the wholesale price on such package of such brand offered or sold to all other importing distributors or distributors or retail licensees within [this Commonwealth] *the geographic area* by a like amount.

(4) No importing distributor or distributor shall be required by any manufacturer or importing distributor to reduce the resale price of any package of any brand of malt or brewed beverages by an amount greater than the amount by which such manufacturer or importing distributor has reduced the wholesale price on such package of such brand to such importing distributor or distributor.

(5) Every importing distributor and distributor receiving a price reduction on any package of any brand of malt or brewed beverages pursuant to this section shall reduce his price by a like amount to all classes of customers.

(6) Manufacturers [of malt or brewed beverages] shall notify importing distributors and distributors, in writing, of any [price reductions, prices on newly introduced brand or packages and subsequent increases after expiration of one hundred eighty days, if any, at least fifteen days in advance of such price changes.]:

- (i) *price reduction with respect to any malt or brewed beverage;*
- (ii) *price of a new brand or package of a malt or brewed beverage; or*
- (iii) *price increase subsequent to a price reduction at least fifteen days before such reduced, new or increased price becomes effective.*

(b) If [a] *any* manufacturer, importing distributor or distributor has reduced the wholesale price [on] *of* any package of any brand of malt or brewed beverages, any other manufacturer, importing distributor or distributor may reduce the wholesale price on the same or similar package [of such brand in order to meet competition. Such price reduction shall be no greater than the price reduction being met. All such price reductions to meet competition shall continue in full force and effect for the balance of the one hundred eighty-day period during which the price reduction being met is required to remain in full force and effect.] *or competing brand to meet competition, which reduction shall:*

- (1) *not exceed the reduction to which it responds; and*

(2) *continue in full force and effect until the earlier of:*

(i) *the one hundred twentieth day after the date on which the reduction to which it responds became effective; or*

(ii) *the lawful rescission of the reduction to which it responds.*

(c) [Notwithstanding any other provision of this section, the board shall have the authority, upon application by a manufacturer, importing distributor or distributor, to permit such] A manufacturer, importing distributor or distributor [to] *may change the price within a time period of less than one hundred [eighty] twenty days from when the price went into effect [upon an appropriate showing that market conditions warrant a change in price.] if market conditions or any other good cause support the change. The manufacturer, importing distributor or distributor shall notify the board within forty-eight hours of the change of such price. The board shall set a hearing date as soon as practicable and shall rule on whether the manufacturer, importing distributor or distributor has made an appropriate showing which supports the price change. If the manufacturer, importing distributor or distributor fails to show good cause, it shall reimburse the difference between the original and increased price to those who purchased the malt or brewed beverage.*

(d) *The board shall monitor the filings deriving from subsection (a)(3) and the applications deriving from subsection (c). The board shall, no less frequently than four times each year, consider at a regularly or specially scheduled meeting the issue of whether the Commonwealth's policy of temperance and responsible conduct with respect to alcoholic beverages is being effected and promoted by this act, including, without limitation, this section and sections 492(18), 493(8) and (22) and 498 of this article, and by the board's regulations, including, without limitation, to those regulations restricting retail licensees' discount pricing practices. The board shall, no less frequently than once each year, provide to the General Assembly a report with respect to the board's findings, which report shall contain a summary of the filing and applications deriving from this section.*

Section 6. Section 492(4) of the act is amended to read:

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

It shall be unlawful—

* * *

(4) [Sunday Sales of Malt or Brewed Beverages by] *Activities of Manufacturers, Importing Distributors or Distributors on Sunday.* For any manufacturer of malt or brewed beverages, importing distributor or distributor, or the servants, agents or employes of the same, to sell[, trade or barter in] malt or brewed beverages between the hours of twelve o'clock midnight of any Saturday and two o'clock in the forenoon of the following Monday. *Notwithstanding any other provision of this section, delivery or receiving of malt or brewed beverages shall be permissible on Sunday after prior arrangement as follows:*

(i) A manufacturer may deliver to any importing distributor or distributor to which the manufacturer has granted wholesale distribution rights for the manufacturer's product.

(ii) An importing distributor or distributor may deliver to any organization to which a special occasion permit has been issued between the hours of nine o'clock antemeridian and five o'clock postmeridian.

(iii) An importing distributor or distributor may deliver to anyone not licensed under this act between the hours of nine o'clock antemeridian and five o'clock postmeridian.

The term "prior arrangement" shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two hundred fifty dollars (\$250) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery.

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Section 7. The provisions of this amendatory act are nonseverable. If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void.

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

APPROVED—The 20th day of December, A.D. 1996.

THOMAS J. RIDGE